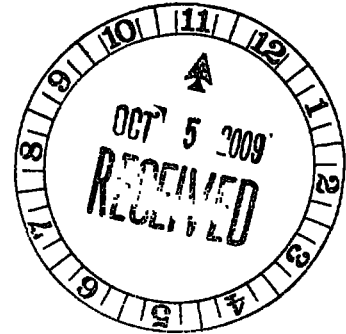


225 821

LAW OFFICE
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CHICAGO, ILLINOIS 60604-1112
TELEPHONE (312) 236-0204
FAX (312) 201-9695
mcfarland@aol.com

THOMAS F. MCFARLAND



October 2, 2009

By UPS overnight mail
(Monday delivery)

Anne K. Quinlan, Esq.
Acting Secretary
Surface Transportation Board
395 E Street, S.W., Suite 100
Washington, DC 20024

Re: Docket No. AB-1041X, *Dakota Northern Railroad, Inc. --Abandonment
Exemption -- in Walsh and Pembina Counties, ND*

Dear Ms. Quinlan:

Enclosed please find an original and 10 copies of Petition for Exemption, for filing with the Board in the above referenced matter.

Also enclosed is a check in the amount of \$6,400 for the filing fee.

Very truly yours,

Tom McFarland

Thomas F. McFarland
Attorney for Applicant

TMcf:mg enc wp8 0\1383\lrsb1

FILED

OCT 5 - 2009

**SURFACE
TRANSPORTATION BOARD**

BEFORE THE
SURFACE TRANSPORTATION BOARD

DAKOTA NORTHERN RAILROAD, INC.)
-- ABANDONMENT EXEMPTION -- IN) DOCKET NO. AB-1041X
WALSH AND PEMBINA COUNTIES,)
ND)



PETITION FOR EXEMPTION

FEE RECEIVED

OCT 5 - 2009

**SURFACE
TRANSPORTATION BOARD**

DAKOTA NORTHERN RAILROAD, INC.
P.O. Box 705
Crookston, MN 56716

Petitioner

ENTERED
Office of Proceedings

OCT 5 - 2009

**Part of
Public Record**

THOMAS F. McFARLAND
THOMAS F. McFARLAND, P.C.
208 South LaSalle Street, Suite 1890
Chicago, IL 60604-1194
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Attorney for Petitioner

DATE FILED: October 5, 2009

FILED

OCT 5 - 2009

**SURFACE
TRANSPORTATION BOARD**

BEFORE THE
SURFACE TRANSPORTATION BOARD

DAKOTA NORTHERN RAILROAD, INC.)
-- ABANDONMENT EXEMPTION -- IN) DOCKET NO. AB-1041X
WALSH AND PEMBINA COUNTIES,)
ND)

PETITION FOR EXEMPTION

Pursuant to 49 U.S.C. § 10502(a) and 49 C.F.R. § 1121.1, *et seq.*, DAKOTA NORTHERN RAILROAD, INC. (DN) hereby petitions for an exemption from the requirements of 49 U.S.C. § 10903 for abandonment of a portion of its Glasston Subdivision between Milepost 42.08 at the north edge of Private Crossing DOT No. 082102T approximately 2.7 miles north of Grafton, and Milepost 60.2 at the end of active track approximately 0.6 miles north of Glasston, a distance of 18.12 miles in Walsh and Pembina Counties, ND (“the Rail Line”).

THE SUBJECT RAIL LINE

The Rail Line constitutes most of DN’s Grafton Subdivision, which is approximately 20.8 miles in length. The proposed abandonment would not result in loss of rail service at Grafton, ND. The Rail Line is shown on a map attached to this Petition as Appendix 1.

The Rail Line was embargoed due to an unsafe bridge at Milepost No. 43.16, effective March 18, 2009. Service at Grafton was not affected by that embargo. A copy of the notice of that embargo is attached to this Petition as Appendix 2. The embargo remains in effect.

REASONS FOR ABANDONMENT

An exemption is sought for abandonment of the Rail Line because (1) operation of the line is unprofitable; (2) there is no reasonable prospect for profitable operations; (3) the line requires substantial track and bridge rehabilitation, the cost of which cannot be amortized from rail line profits; and (4) shippers on the line have feasible transportation alternatives.

1. Unprofitability

Despite DN's best efforts to increase rail traffic over the Rail Line, traffic has been low in the past several years. Set forth below is the rail Line's rail traffic history by shipper during the past four years:

Shipper *	Carloads			
	2006	2007	2008	2009 to 3/18/09
ADM (edible beans)	39	44	36	3
Agriliance (fertilizer)	16	28	8	0
TOTAL	55	72	44	3

* All shippers are located at St. Thomas, ND.

DN expects forecast year traffic to amount to only 44 carloads, consisting of traffic for ADM (36) and Agriliance (8) actually shipped in 2008. ADM ships edible beans by rail at St. Thomas. Agriliance receives fertilizer by rail at St. Thomas.

DN's actual revenue from those 44 base year carloads was \$17,435. Even in 2007 when the most rail shipments in recent years were experienced, DN's actual revenue from the 72 carloads transported was only \$25,738.

That revenue would fall far short of enabling DN to operate the Rail Line at a profit. The cost for DN to maintain the track and bridges on the Rail Line alone would amount to approximately \$108,720 in the forecast year, using an average normalized maintenance cost of \$6,000 per mile that the Board has recognized as a reasonable estimate of such cost in other abandonment cases. ($\$6,000 \text{ per mile} \times 18.12 \text{ miles} = \$108,720$). See, e.g., *Conrail - Aban. - bet. Warsaw & Valp. Counties, IN*, 9 I.C.C.2d 1299, 1304 (1993). In addition, DN would incur approximately \$17,472 in operating costs in the forecast year, based on 52 train trips to St. Thomas in the forecast year, with 2 employees and 4 hours per trip ($416 \text{ man-hours} \times \$42 \text{ per hour} = \$17,472$).

There are other costs which would add to DN's operating loss, such as freight car-hire costs, locomotive and fuel costs, and property taxes. However, on the basis of costs for normalized maintenance of way and the train crew alone, continued operation of the Rail Line would result in an operating loss of \$108,757 in the forecast year at 2008 traffic levels ($\$108,720 + \$17,472 - \$17,435 = \$108,757$), and \$100,454 in the forecast year at the highest 2007 revenue level ($\$108,720 + \$17,472 - \$25,738 = \$100,454$).

There would be a serious adverse effect on DN, and on its ability to provide quality rail service to its shippers on other rail lines, if DN were to be required to incur operating losses of that magnitude on a continuing basis. Consistently with Constitutional requirements, a rail carrier cannot be required to operate a rail line indefinitely at a loss. *Brooks-Scanlon v. Railroad Com. of Louisiana*, 251 U.C. 396, 399 (1920).

2. Rehabilitation

An expenditure of approximately \$1 million is required to rehabilitate the Rail Line for track and bridge repairs to comply with FRA Class 1 safety standards.

The expenditure for FRA Class 1 safety compliance is composed of the following:

Replace defective joint ties and clusters of failed ties, 6,400 crossties installed at \$55 per used tie	\$352,000
Switch ties, 450 @ \$125 each, installed	56,250
Surface 18.12 miles of track	333,927
Replace 900 defective joints bars @ \$150 per pair	135,000
Replace 2970 linear feet of rail at \$550 per 33 feet	49,500
Bridge at MP 43.16 - replace and redrive five piles	85,000
TOTAL	<hr/> \$1,011,677

The substantial rehabilitation cost of more than \$1 million could not be amortized from rail line operating profit, which, as shown, is nonexistent. The huge unrecoverable rehabilitation cost would add to the undue burden on DN and interstate commerce from a requirement of continued operation of the Rail Line.

3. Opportunity Cost

In addition to the foregoing elements of burden, DN would incur a significant opportunity cost from a requirement of continued operation of the Rail Line. In view of the compelling nature of the burden on DN and interstate commerce from continuing operating losses and a huge unrecoverable rehabilitation expense, DN has not quantified the additional burden that would result from an economic loss caused by such opportunity cost.

4. Transportation Alternatives

The adverse effect on local interests from abandonment would not be major because shippers on the line have feasible transportation alternatives. Shippers on the Rail Line are

already using alternative transportation since the embargo. They would not make substantial use of the line if the embargo were to be cancelled. That is evident from the traffic levels in recent years.

The Rail Line is paralleled by US Highway 71, which is a two-lane hard-surface road located within 100 to 1,200 feet of the Rail Line for its entire length. In addition, I-29 parallels the entire Rail Line only 12 to 14 miles to its east. Numerous motor carriers operate over those highways. There are significant rail alternatives as well: i.e., BNSF's Drayton Subdivision two to 15 miles to the east and DN's Walhalla Subdivision two to 12 miles to the west.

The foregoing is not to say that ADM and Agrilience would not experience an increase in freight charges upon abandonment as a result of use of truck or rail-truck transportation. However, such increased charges would not be extensive based on their recent infrequent use of the Rail Line, and the harm from that added expense would be outweighed decidedly by the serious harm to DN and interstate commerce from operating losses and unrecoverable track rehabilitation costs. *Conrail - Aban. - bet. Warsaw & Valp. Counties, IN, supra*, 9 I.C.C.2d at 1317.

AN EXEMPTION IS WARRANTED

Abandonment of a rail line requires Board approval under 49 U.S.C. § 10903. However, on petition, the Board is to exempt a proposed abandonment from the requirement of such approval if the Board finds under 49 U.S.C. § 10502(a) that application of 49 U.S.C. § 10903 to the proposed abandonment and discontinuance is not required to carry out the rail transportation policy of 49 U.S.C. § 10101, and either that the proposed abandonment and discontinuance are of

limited scope, or that application of 49 U.S.C. § 10903 to the proposed abandonment and discontinuance is not necessary to protect shippers from abuse of market power.

In regard to the first standard of 49 U.S.C. § 10502(a), the need for regulation is to be tested against the provision(s) of the rail transportation policy that is (are) implicated by the statute from which an exemption is sought. As to abandonment and discontinuance under 49 U.S.C. § 10903, the rail policy most directly implicated is 49 U.S.C. § 10101(4) in favor of continuation of a sound rail transportation system to meet the needs of the public and the national defense. The issue is whether a conventional abandonment application is required to determine whether the abandonment and discontinuance should be approved or whether it is so apparent that continued operation of the line is not required for an adequate rail transportation system that abandonment and discontinuance can be authorized by exemption without the need for such an application.

There is an established body of case law in resolution of that issue. An exemption for abandonment is to be denied where affected shippers contest abandonment and it is not shown that the revenues from their traffic are clearly marginal compared to the cost of operating the involved rail line. *Gauley River Railroad, LLC -- Aband. & Discon. of Serv. Exempt. -- in Webster and Nicholas Counties, WV*, 1999 STB LEXIS 345 at *14 (STB Docket No. AB-559 [Sub-No. 1X], decision served June 16, 1999 at 5); *Central Railroad Co. of Indiana -- Aband. Exempt. -- in Dearborn, Decatur, Franklin, Ripley and Shelby Counties, IN*, 1998 STB LEXIS 121 at * 10 (STB Docket No. AB-459 [Sub-No. 2X], decision served May 4, 1998 at 9-10). However, an exemption is appropriate where it is apparent that the rail carrier would operate at a substantial loss, regardless of whether shippers oppose the exemption. *Minnesota Northern*

Railroad, Inc. -- Aband. Exempt. -- between Redland Jct. and Fertile, in Polk County, MN, 1997 STB LEXIS 294 at * 25 (STB Docket No. AB-497 [Sub-No. 2X], decision served Nov. 14, 1997 at 11-12).

It is evident that the case at hand fits into the latter category. Continued operation of the line would result in a loss of at least \$100,000 per year. In addition, continued operation would require an expenditure of more than \$1 million for track and bridge rehabilitation to meet FRA Class I safety standards. It is thus apparent that the revenue from the traffic of shippers on the line is marginal compared to the cost of operating the line. In that circumstance, compliance with the application process of 49 U.S.C. § 10903 is not necessary to carry out the policy of 49 U.S.C. § 10101(4) in favor of a sound rail transportation system to meet the needs of the public and the national defense. Issuance of an exemption would also further the rail policies of 49 U.S.C. § 10101(3) in favor of promoting safe and efficient rail transportation; § 10101(5) in favor of fostering sound economic conditions in transportation; § 10101(7) in favor of reducing regulatory barriers to exit; and § 10101(9) in favor of encouraging efficient rail management.

Because shippers on the line have adequate transportation alternatives that they are already using, application of 49 U.S.C. § 10903 to the proposed abandonment and discontinuance is not necessary to protect shippers from an abuse of market power. *Minnesota Northern Railroad, Inc. -- Aband. Exempt. -- between Redland Jct. and Fertile, in Polk County, MN, supra*, 1997 STB LEXIS 294 at *24. In light of that finding of no abuse of market power, the Board need not determine whether the proposed transaction is of limited scope. However, the proposed 18.12-mile abandonment is limited in scope.

Inasmuch as the evidence warrants the findings required by 49 U.S.C. § 10502(a), the Board should grant the proposed exemption.

ENVIRONMENTAL AND HISTORIC CONSIDERATIONS

A draft Environmental and Historic Report is attached to this Petition as Appendix 3. The Report forms the basis for a finding that the proposed abandonment would not have a significant adverse effect on the quality of the human environment nor on the preservation of historic resources.

EMPLOYEE PROTECTION

The Board should impose the employee protective conditions in *Oregon Short Line R. Co. - Abandonment - Goshen*, 360 I.C.C. 91 (1979), as a condition to approval of the proposed abandonment.

FEDERALLY-GRANTED RIGHT-OF-WAY

DN does not have information in its possession show that the Rail Line contains federally-granted right-of-way.

DRAFT FEDERAL REGISTER NOTICE

The draft Federal Register notice is attached to this Petition as Appendix 4.

NEWSPAPER NOTICE

Copies of notices published in newspapers of general circulation in Walsh and Pembina Counties, North Dakota are attached as Appendix 5.

VERIFICATION

Attached as Appendix 6 is a Declaration of George LaPray, General Manager of DN in verification of the factual assertions in this Petition.

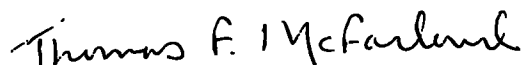
CONCLUSION AND REQUESTED RELIEF

WHEREFORE, the Board should grant an exemption for (1) abandonment of a portion of its Glasston Subdivision between Milepost 42.08 at the north edge of Private Crossing DOT No. 082102T approximately 2.7 miles north of Grafton, and Milepost 60.2 at the end of active track approximately 0.6 miles north of Glasston, a distance of 18.12 miles in Walsh and Pembina Counties, ND.

Respectfully submitted,

DAKOTA NORTHERN RAILROAD, INC.
P.O. Box 705
Crookston, MN 56716

Petitioner



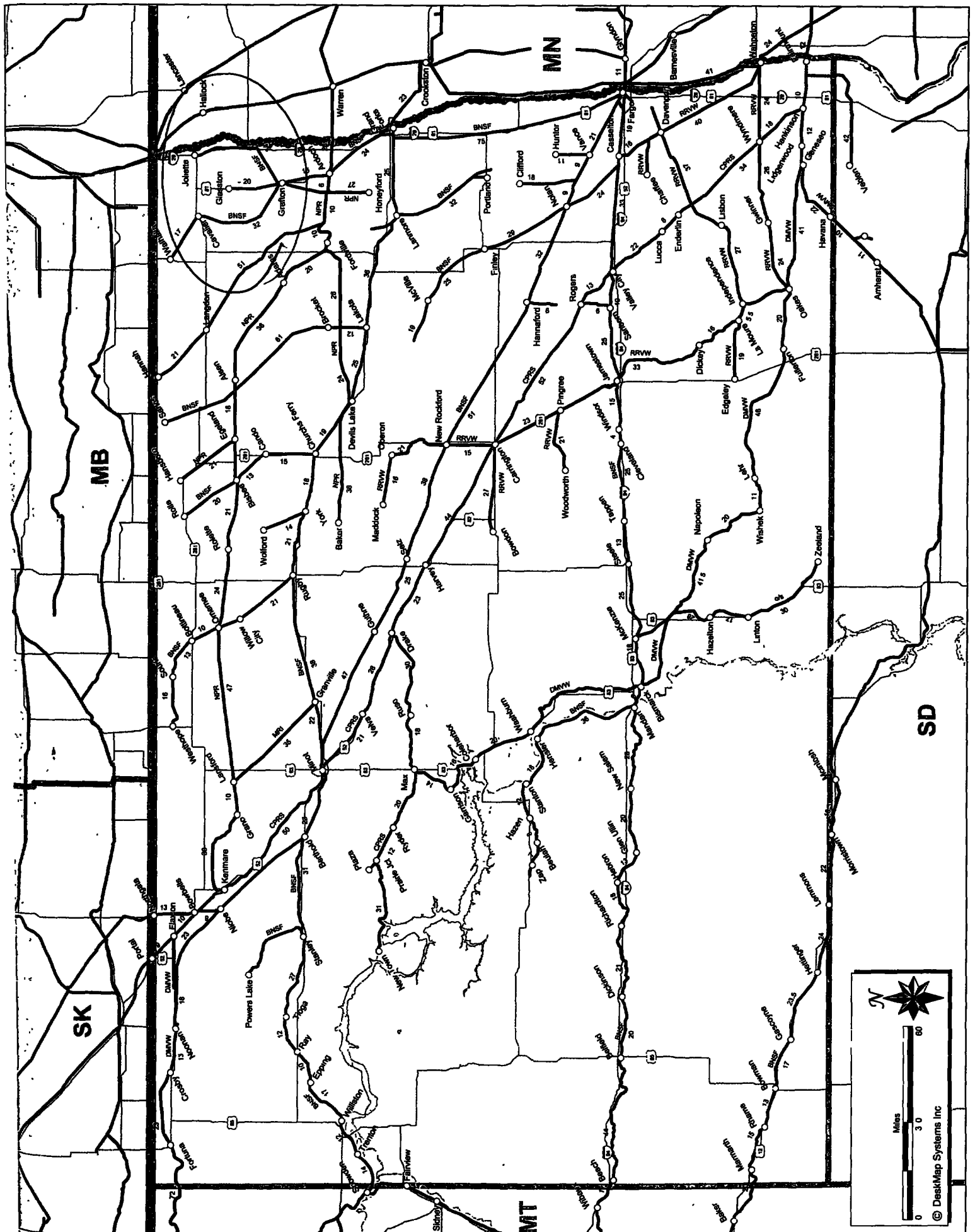
THOMAS F. McFARLAND
THOMAS F. McFARLAND, P.C.
208 South LaSalle Street, Suite 1890
Chicago, IL 60604-1194
(312) 236-0204

Attorney for Petitioner

DATE FILED: October 5, 2009

PETITION FOR EXEMPTION

APPENDIX 1



PETITION FOR EXEMPTION

APPENDIX 2



Dakota Northern Railroad

PO Box 705

Crookston, MN 56716

Phone: 218.281.1750 Fax: 218.281.4705

18 March 2009

**TO: Shippers located on Dakota Northern Railroad Glasston Subdivision
Stations: Auburn, ND; St. Thomas, ND; Glasston, ND**

SUBJECT: Service Embargo

This is to advise that Dakota Northern Railroad has placed an embargo on rail traffic at the above referenced stations.

This embargo is placed do to defects found in a bridge between Grafton and St. Thomas. The defects render the bridge unsafe for the movement of loaded rail cars.

Sincerely.

**George LaPray,
General Manager**

George LaPray

From: Embargo Permit DB System [embargo_project@railinc.com]
Sent: Tuesday, February 24, 2009 6:49 PM
To: George LaPray
Subject: Embargo #DN000109 has been approved on 02-24-2009

Embargo #DN000109 has been approved on 02-24-2009

DN-DAKOTA NORTHERN RAILROAD INC

Embargo Number: DN000109

Status: Effective

Companion Embargo Number: None

Effective Date: 02-24-2009

Expiration Date: 02-23-2010

Allow Permit: No

Tier 2 Effective Date: 02-24-2009

Requester : George LaPray - Ph: 1.218.281175 - Email: mnn@rrv.net

Bypass Local Waybills: No

Operating Station Notice: No

Effective Immediately: Yes

Include Empty Car: No

Maximum Car Allowed: .

Commodities: Target All Commodities

Geography:

FSAC(s):From Stations, To Stations

DN - 55546 - AUBURN, ND

DN - 55553 - ST THOMAS, ND

DN - 55559 - GLASSTON, ND

Umler Equip. Type : Target All Umler Equipment Types

Car Weight: No Weight Restrictions

Clearance Code: No Clearance Code

Waybill Parties: Target All Waybill Parties

Cause: Bridge out of service

Cause Detail:

Note:

Jeffrey J. Usher

- Asst. Vice President-Business Services
Association of American Railroads

AAR Embargo/OPSL Notes And Permit System (<https://aarembargo.railinc.com/epdb>)

PETITION FOR EXEMPTION

APPENDIX 3

LAW OFFICE
THOMAS F. MCFARLAND, P.C.
208 SOUTH LASALLE STREET - SUITE 1890
CHICAGO, ILLINOIS 60604-1112
TELEPHONE (312) 236-0204
FAX (312) 201-9695
mcfarland@aol.com

THOMAS F. MCFARLAND

August 26, 2009

State Clearinghouse

North Dakota State Single Point of Contact
Governors Office
600 East Boulevard Avenue
Department 101
Bismark, ND 58505-3001

State Environmental Protection Agency

North Dakota Department of Health
Environmental Health Section
918 East Divide Avenue
Bismark, ND 58501-1947

County Commissioners:

Walsh County Commissioners
600 Cooper Avenue
Grafton, ND 58237-1542

County Commissioners:

Pembina County Commissioners
301 Dakota Street W. #1
Cavalier, ND 58220

Environmental Protection Agency
(regional office):

U.S. Environmental Protection Agency
Region 8
999 18th Street, Suite 500
Denver, CO 80202-2466

U.S. Fish & Wildlife Service:

U.S. Fish & Wildlife Service - Region 6
P.O. Box 25486
Denver Federal Center
Denver, CO 80225

U.S. Army Corps of Engineers

U.S. Army Corps of Engineers
Chicago District (CELR-PA)
111 N. Canal Street
Chicago, IL 60606-7206

National Park Service:

Nick Chevance, Environmental Coordinator
Planning and Compliance Office
National Park Service - Midwest Region
601 Riverfront Drive
Omaha, NE 68102-4226

Natural Resources Conservation Service:

Natural Resources Conservation Service
USDA
220 E. Rosser Avenue
Bismark, ND 58502-1458

National Oceanic & Atmospheric Admin.:

NGS Information Services, NOAA, N/NGS12
National Geodetic Survey SSMC-3, #9202
1315 East-West Highway
Silver Spring, MD 20910-3282

North Dakota Historical Preservation Office:

North Dakota State Historical Society
612 East Boulevard Avenue
Bismark, ND 58505

City Planner:

City of Saint Thomas, North Dakota
City Hall
Box 177
St. Thomas, ND 58276

City Planner:

City of Grafton, North Dakota
5 East 4th Street
P.O. Box 578
Grafton, ND 58237

Re: STB Docket No. AB-1041X, *Dakota Northern Railroad, Inc. -- Abandonment Exemption -- in Walsh and Pembina Counties, ND*

THOMAS F. MCFARLAND

August 26, 2009

Page 2

Dear Agency or Governmental Representative:

On or about September 15, 2009, Dakota Northern Railroad, Inc. (DN) intends to file a Petition for Exemption with the Surface Transportation Board (the Board) for abandonment of a portion of its Glasston Subdivision between Milepost 42.08 at the north edge of Private Crossing DOT No. 082102T approximately 2.7 miles north of Grafton, and Milepost 60.2, at the end of active track approximately 0.6 miles north of Glasston, a distance of approximately 18.12 miles in Walsh and Pembina Counties, North Dakota (the Grafton-Glasston Line).

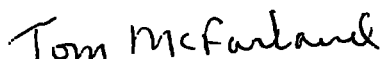
In my prior letter to you in this matter, dated July 23, 2009, the southern terminus of the proposed abandonment was incorrectly identified as Milepost 42.1, a point approximately 700 feet south of a township road (DOT No. 082103A) north of Grafton. You should disregard that erroneous identification and use the identification in this letter and in the Draft Environmental and Historic Report.

Attached is a Draft Environmental and Historic Report describing the proposed action and any expected environment and historic effects, as well as a map of the affected area.

This Draft Report is being provided so that you may review the information that will form the basis for the Board's independent environmental analysis of this proceeding. If any of the information is misleading or incorrect, if you believe that pertinent information is missing, or if you have any questions about the Board's environmental review process, please contact the Section of Environmental Analysis (SEA), Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423, 202-245-0295, and refer to the above Docket No. AB-1041X. Because the applicable statutes and regulations impose stringent deadlines for processing this action, your written comments to SEA (with a copy to our representative) would be appreciated within 3 weeks.

Your comments will be considered by the Board in evaluating the environmental and historic preservation impacts of the contemplated action. If there are any questions concerning this proposal, please contact our representative directly. Our representative in this matter is Thomas F. McFarland, Thomas F. McFarland, P.C., 208 South LaSalle Street, Suite 1890, Chicago, IL 60604-1112, (312) 236-0204, fax (312) 201-9695, email: mcfarland@aol.com.

Very truly yours,



Thomas F. McFarland
*Attorney for Dakota Northern
Railroad, Inc.*

BEFORE THE
SURFACE TRANSPORTATION BOARD

DAKOTA NORTHERN RAILROAD, INC.)
-- ABANDONMENT EXEMPTION -- IN) DOCKET NO. AB-1041X
WALSH AND PEMBINA COUNTIES,)
ND)

DRAFT ENVIRONMENTAL AND HISTORIC REPORT

DAKOTA NORTHERN RAILROAD, INC.
P.O. Box 705
Crookston, MN 56716

Petitioner

THOMAS F. McFARLAND
THOMAS F. McFARLAND, P.C.
208 South LaSalle Street, Suite 1890
Chicago, IL 60604-1112
(312) 236-0204
(312) 201-9695 (fax)
mcfarland@aol.com

Attorney for Petitioner

Date Submitted: August 26, 2009

BEFORE THE
SURFACE TRANSPORTATION BOARD

DAKOTA NORTHERN RAILROAD, INC.)
-- ABANDONMENT EXEMPTION -- IN) DOCKET NO. AB-1041X
WALSH AND PEMBINA COUNTIES,)
ND)

DRAFT ENVIRONMENTAL AND HISTORIC REPORT

Pursuant to 49 C.F.R. § 1105.7 and 1105.8, DAKOTA NORTHERN RAILROAD, INC.

(DN) hereby files this Draft Environmental and Historic Report.

I. Environmental Report

DN hereby submits the following information required by 49 C.F.R. § 1105.7(e):

(1) Proposed action and alternatives. Describe the proposed action, including commodities transported, the planned disposition (if any) of any rail line and other structures that may be involved, and any possible changes in current operations or maintenance practices. Also describe any reasonable alternatives to the proposed action. Include a readable, detailed map and drawings clearly delineating the project.

DN proposes to file a Petition pursuant to 49 U.S.C. § 10502(a) for an exemption from the requirements of 49 U.S.C. § 10903 for abandonment of a portion of its Glasston Subdivision between Milepost 42.08 at the north edge of Private Crossing DOT No. 082102T approximately 2.7 miles north of Grafton, and Milepost 60.2 at the end of active track approximately 0.6 miles north of Glasston, a distance of 18.12 miles in Walsh and Pembina Counties, North Dakota (the Rail Line).

DN has used the Rail Line to transport edible beans and fertilizer by rail.

If the requested exemption is granted and becomes effective, DN plans to remove and to sell or reuse the track materials in the Rail Line. The rail and crossties will be removed and will be properly disposed. The sub-surface of the property will not be disturbed. The land in the right-of-way will either be sold as a corridor for railbanking and interim recreation trail use, or will be sold in parcels to adjoining landowners or others.

The Rail Line was embargoed effective March 18, 2009 due to defects in a bridge at Milepost 43.16, which resulted in unsafe conditions. Rail operations over the Rail Line ceased at that time. The embargo continues in effect.

Rail operations and track maintenance would cease if the requested exemption were to be issued and become effective.

There is no reasonable alternative to the proposed abandonment because revenues from operation of the Line are not sufficient to offset corresponding operating costs nor are such revenues sufficient to permit amortization of required track and bridge rehabilitation costs within a reasonable period of time. Nor are such revenues sufficient to offset the opportunity costs of operating the Line.

A map of the Grafton-Glasston Line is attached to this Report as Appendix 1.

(2) Transportation system. Describe the effects of the proposed action on regional or local transportation systems and patterns. Estimate the amount of traffic (passenger or freight) that will be diverted to other transportation systems or modes as a result of the proposed action.

DN believes that the proposed exemption will have a minimal effect on regional or local transportation systems and patterns. Only 44 carloads of freight moved over the rail line in 2008. At roughly four trucks per rail carload, that would equate to 176 truck shipments in a one-year

period, or an average of less than one additional truck per day on the regional highway system.

US Highway 81 is an all-weather road that parallels the Grafton-Glasston Line for its entire distance. The highway can easily accommodate that increased truck traffic.

(3) Land use. (i) Based on consultation with local and/or regional planning agencies and/or a review of the official planning documents prepared by such agencies, state whether the proposed action is consistent with existing land use plans. Describe any inconsistencies.

DN believes that the proposed exemption will not be inconsistent with local or regional land use plans. Based on DN's experience in the area, there is little possibility that businesses desiring rail service will locate along the Rail Line. Shippers currently using the Rail Line can easily reroute their traffic via truck or rail-truck service. In accordance with the requirements of this regulation, DN is consulting by letter with the planning agencies of the towns of Saint Thomas and Glasston through which the Line passes, and the planning agencies of Walsh and Pembina Counties. See letter attached as Appendix 2.

(3)(ii) Based on consultation with the U.S. Soil Conservation Service, state the effect of the proposed action on any prime agricultural land.

DN does not believe that the proposed exemption would have any effect on prime agricultural land. The Rail Line is adjacent to agricultural land but is not itself agricultural land. Therefore, removal of trackage from the Rail Line should not have any effect on prime agricultural land. In accordance with this regulation, DN is consulting by letter with the Natural Resources Conservation Service (Appendix 2 hereto).

(3)(iii) If the action affects land or water uses within a designated coastal zone, include the coastal zone information required by §1105.9.

The proposed exemption does not affect land or water uses in a designated coastal zone.

(3)(iv) If the proposed action is an abandonment, state whether or not the right-of-way is suitable for alternative public use under 49 U.S.C. 10906 and explain why.

In DN's opinion, the right-of-way would not be suitable for alternative public use as a highway because there are adequate highways in the area. The right-of-way may be suitable for alternative public use as a recreational trail.

(4) Energy. (i) Describe the effect of the proposed action on transportation of energy resources.

The proposed exemption will have no effect on transportation of energy resources.

(4)(ii) Describe the effect of the proposed action on recyclable commodities.

The proposed exemption will have no effect on recyclable commodities.

(4)(iii) State whether the proposed action will result in an increase or decrease in overall energy efficiency and explain why.

The proposed exemption will result in a decrease in overall energy efficiency because rail transportation is more energy efficient than truck transportation. However, the decrease will be minimal. See response to item 2 above.

(4)(iv) If the proposed action will cause diversions from rail to motor carriage of more than:

(A) 1,000 rail carloads a year; or

(B) An average of 50 rail carloads per mile per year for any part of the affected line, quantify the resulting net change in energy consumption and show the data and methodology used to arrive at the figure given. To minimize the production of repetitive data, the information on overall energy efficiency in §§1105.7(e)(4)(iii) need not be supplied if the more detailed information in §§1105.7(e)(4)(iv) is required.

Not applicable.

(5) Air. (i) If the proposed action will result in either:

(A) An increase in rail traffic of at least 100 percent (measured in gross ton miles annually) or an increase of at least eight trains a day on any segment of rail line affected by the proposal, or

(B) An increase in rail yard activity of at least 100 percent (measured by carload activity), or

(C) An average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day on any affected road segment, quantify the anticipated effect on air emissions. For a proposal under 49 U.S.C. 10901 (or 10502) to construct a new line or reinstitute service over a previously abandoned line, only the eight train a day provision in subsection (5)(i)(A) will apply.

Not applicable.

(5)(ii) If the proposed action affects a class I or nonattainment area under the Clean Air Act, and will result in either:

(A) An increase in rail traffic of at least 50 percent (measured in gross ton miles annually) or an increase of at least three trains a day on any segment of rail line,

(B) An increase in rail yard activity of at least 20 percent (measured by carload activity), or

(C) An average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day on a given road segment, then state whether any expected increased emissions are within the parameters established by the State Implementation Plan. However, for a rail construction under 49 U.S.C. 10901 (or 49 U.S.C. 10502), or a case involving the reinstitution of service over a previously abandoned line, only the three train a day threshold in this item shall apply.

Not applicable.

(5)(iii) If transportation of ozone depleting materials (such as nitrogen oxide and freon) is contemplated, identify: the materials and quantity; the frequency of service; safety practices (including any speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents and spills; contingency plans to deal with accidental spills; and the likelihood of an accidental release of ozone depleting materials in the event of a collision or derailment.

Not applicable.

(6) Noise. If any of the thresholds identified in item (5)(i) of this section are surpassed, state whether the proposed action will cause:

(i) An incremental increase in noise levels of three decibels Ldn or more; or

(ii) An increase to a noise level of 65 decibels Ldn or greater. If so, identify sensitive receptors (e.g., schools, libraries, hospitals, residences, retirement communities, and nursing homes) in the project area, and quantify the noise increase for these receptors if the thresholds are surpassed.

Not applicable.

(7) Safety. (i) Describe any effects of the proposed action on public health and safety (including vehicle delay time at railroad grade crossings).

The proposed exemption will have a beneficial effect on public health and safety.

Discontinuance of rail operations over the Rail Line will result in the closing and elimination of 33 public at-grade road crossings along the line. That will reduce vehicle delay time and potential for rail-motor vehicle accidents in the area.

(7)(ii) If hazardous materials are expected to be transported, identify: the materials and quantity; the frequency of service; whether chemicals are being transported that, if mixed, could react to form more hazardous compounds; safety practices (including any speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents and hazardous spills; the contingency plans to deal with accidental spills; and the likelihood of an accidental release of hazardous materials.

Not applicable.

(7)(iii) If there are any known hazardous waste sites or sites where there have been known hazardous materials spills on the right-of-way, identify the location of those sites and the types of hazardous materials involved.

Not applicable.

(8) Biological resources. (i) Based on consultation with the U.S. Fish and Wildlife Service, state whether the proposed action is likely to adversely affect endangered or threatened species or areas designated as a critical habitat, and if so, describe the effects.

DN does not believe that it is likely that the proposed exemption would adversely affect endangered or threatened species or areas designated as critical habitat. In accordance with this regulation, DN is consulting by letter with the U.S. Fish and Wildlife Service (Appendix 2).

(8)(ii) State whether wildlife sanctuaries or refuges, National or State parks or forests will be affected, and describe any effects.

DN does not believe that the proposed exemption would affect wildlife sanctuaries or refuges, nor National or state parks or forests.

(9) Water. (i) Based on consultation with State water quality officials, state whether the proposed action is consistent with applicable Federal, State or local water quality standards. Describe any inconsistencies.

DN believes that the proposed exemption will be consistent with applicable Federal, State or local water quality standards. In accordance with this regulation, DN is consulting by letter with North Dakota water quality officials (Appendix 2).

(9)(ii) Based on consultation with the U.S. Army Corps of Engineers, state whether permits under section 404 of the Clean Water Act (33 U.S.C. 1344) are required for the proposed action and whether any designated wetlands or 100-year flood plains will be affected. Describe the effects.

DN believes that permits under section 404 of the Clean Water Act are not required for the proposed exemption. DN does not believe that the proposed exemption will affect any designated wetlands or 100-year flood plains. In accordance with this regulation, DN is consulting by letter with the U.S. Army Corps of Engineers (Appendix 2).

(9)(iii) State whether permits under section 402 of the Clean Water Act (33 U.S.C. 1342) are required for the proposed action. (Applicants should contact the U.S. Environmental Protection Agency or the state environmental protection or equivalent agency if they are unsure whether such permits are required.)

DN believes that permits under section 402 of the Clean Water Act are not required for the proposed exemption. In accordance with this regulation, DN is consulting by letter with the U.S. Environmental Protection Agency (Appendix 2).

(10) Proposed Mitigation. Describe any actions that are proposed to mitigate adverse environmental impacts, indicating why the proposed mitigation is appropriate.

Not applicable.

Responses to consultation letters from the North Dakota Department of Health, Environmental Health Section, dated August 14, 2009, and from the National Geodetic Survey, dated August 21, 2009, are attached as Appendix 3.

II. Historic Report

DN hereby submits the following information required by 49 C.F.R. § 1105.8(d):

(d)(1) A U.S.G.S. topographic map (or an alternate map drawn to scale and sufficiently detailed to show buildings and other structures in the vicinity of the proposed action) showing the location of the proposed action, and the locations and approximate dimensions of railroad structures that are 50 years old or older and are part of the proposed action;

The required topographic map is attached to this Report as Appendix 4.

(d)(2) A written description of the right-of-way (including approximate widths, to the extent known), and the topography and urban and/or rural characteristics of the surrounding area;

The right-of-way to be abandoned is generally 100 feet wide and 18.1 miles long. It extends generally through rural, slightly rolling terrain.

(d)(3) Good quality photographs (actual photographic prints, not photocopies) of railroad structures on the property that are 50 years old or older and of the immediately surrounding area;

Attached to this Report as Appendix 5 are photographs of the bridges on the Rail Line.

(d)(4) The date(s) of construction of the structure(s), and the date(s) and extent of any major alterations, to the extent such information is known;

Not known, except that the bridges are thought to be more than 50 years old.

(d)(5) A brief narrative history of carrier operations in the area, and an explanation of what, if any, changes are contemplated as a result of the proposed action;

The Rail Line was originally a part of a line of the Great Northern Railway (GNR) between Grand Forks, North Dakota and Gretna, Manitoba, Canada. Burlington Northern Railroad Company, a successor of GNR, abandoned the line up to its current northern terminus at Glasston. DN leased the Grafton-Glasston Rail Line in 2006.

(6) A brief summary of documents in the carrier's possession, such as engineering drawings, that might be useful in documenting a structure that is found to be historic;

No such documents are in DN's possession.

(7) An opinion (based on readily available information in the railroad's possession) as to whether the site and/or structures meet the criteria for listing on the National Register of Historic Places (36 CFR 60.4), and whether there is a likelihood of archeological resources or any other previously unknown historic properties in the project area, and the basis for these opinions (including any consultations with the State Historic Preservation Office, local historical societies or universities);

It is DN's opinion that the bridges on the Rail Line do not meet the criteria for listing on the National Register of Historical Places, and that there is no likelihood of archeological resources or any other previously unknown historic properties in the project area. In accordance

with this regulation, DN has consulted by letter with the North Dakota Historic Preservation Office (Appendix 2). Any response will be furnished to the Board's environmental section.

(8) A description (based on readily available information in the railroad's possession) of any known prior subsurface ground disturbance or fill, environmental conditions (naturally occurring or manmade) that might affect the archeological recovery of resources (such as swampy conditions or the presence of toxic wastes), and the surrounding terrain.

DN has no knowledge of any prior subsurface ground disturbance or fill, or environmental conditions that might affect the archeological recovery of resources and the surrounding terrain.

Attached as Appendix 6 is a response to consultation letter from the State Historical Society of North Dakota, dated August 20, 2009.

Respectfully submitted,

DAKOTA NORTHERN RAILROAD, INC.
P.O. Box 705
Crookston, MN 56716

Petitioner

Thomas F. McFarland

THOMAS F. McFARLAND
THOMAS F. McFARLAND, P.C.
208 South LaSalle Street, Suite 1890
Chicago, IL 60604-1112
(312) 236-0204
(312) 201-9695 (fax)
mcfarland@aol.com

Attorney for Petitioner

Date Submitted: August 26, 2009

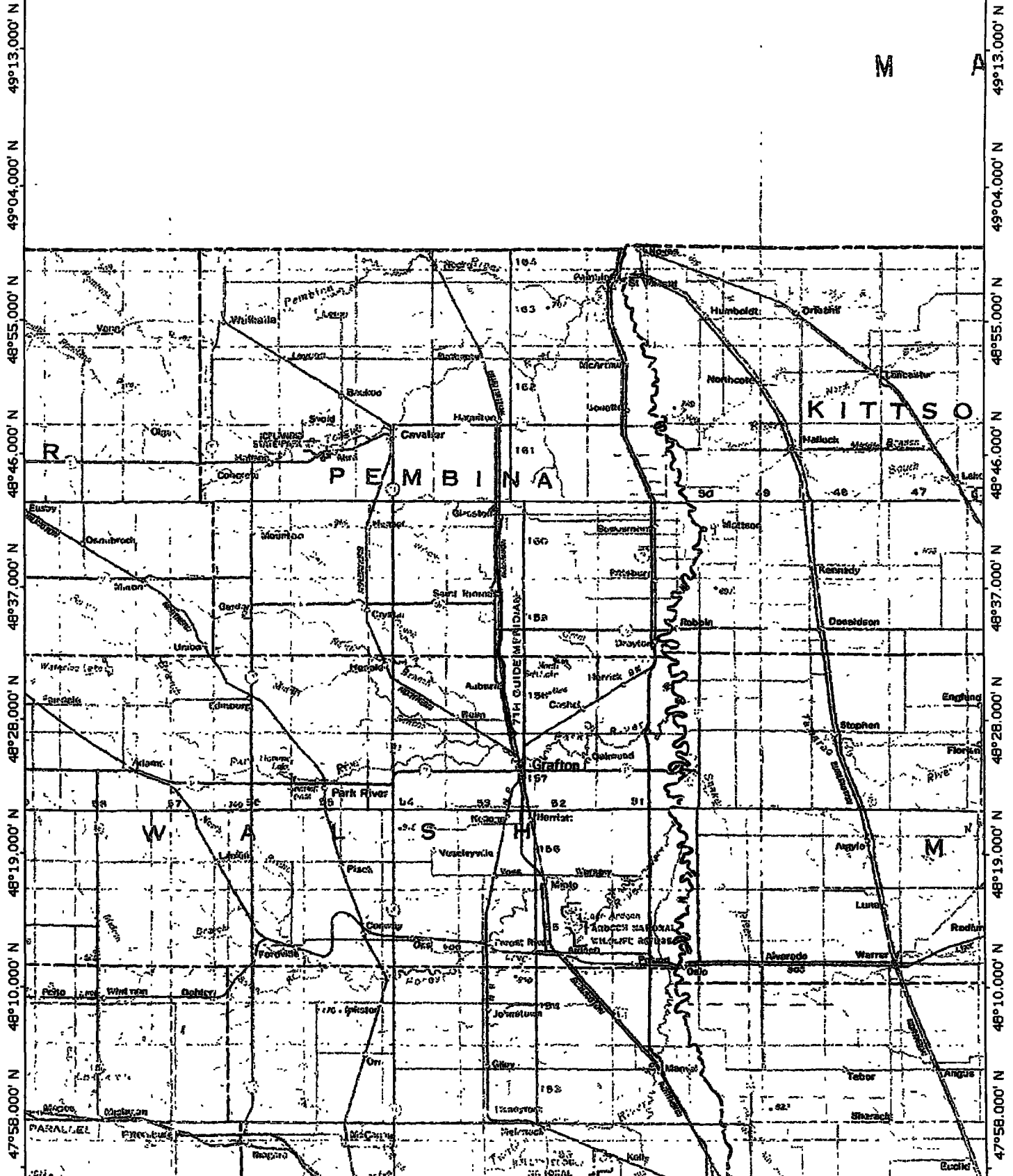
**DRAFT ENVIRONMENTAL
AND HISTORIC REPORT**

APPENDIX 1

Appendix 1

TOPOI map printed on 07/03/09 from "Untitled.tpo"

97°59.000' W 97°47.000' W 97°35.000' W 97°23.000' W 97°11.000' W 96°59.000' W WGS84 96°38.000' W



TN 46°

0 5 10 15 20 25 miles
0 5 10 15 20 25 30 35 40 km

Map created with TOPOI ©2003 National Geographic (www.nationalgeographic.com/topo)

**DRAFT ENVIRONMENTAL
AND HISTORIC REPORT**

APPENDIX 2

LAW OFFICE
THOMAS F. MCFARLAND, P.C.
208 SOUTH LASALLE STREET - SUITE 1890
CHICAGO, ILLINOIS 60604-1112
TELEPHONE (312) 236-0204
FAX (312) 201-9695
mcfarland@aol.com

THOMAS F. MCFARLAND

July 23, 2009

State Clearinghouse

North Dakota State Single Point of Contact
Governors Office
600 East Boulevard Avenue
Department 101
Bismark, ND 58505-3001

County Commissioners:

Walsh County Commissioners
600 Cooper Avenue
Grafton, ND 58237-1542

Environmental Protection Agency
(regional office):

U.S. Environmental Protection Agency
Region 8
999 18th Street, Suite 500
Denver, CO 80202-2466

U.S. Army Corps of Engineers

U.S. Army Corps of Engineers
Chicago District (CELR-PA)
111 N. Canal Street
Chicago, IL 60606-7206

Natural Resources Conservation Service:

Natural Resources Conservation Service
USDA
220 E. Rosser Avenue
Bismark, ND 58502-1458

North Dakota Historical Preservation Office:

North Dakota State Historical Society
612 East Boulevard Avenue
Bismark, ND 58505

City Planner:

City of Grafton, North Dakota
5 East 4th Street
P.O. Box 578
Grafton, ND 58237

State Environmental Protection Agency

North Dakota Department of Health
Environmental Health Section
918 East Divide Avenue
Bismark, ND 58501-1947

County Commissioners:

Pembina County Commissioners
301 Dakota Street W. #1
Cavalier, ND 58220

U.S. Fish & Wildlife Service:

U.S. Fish & Wildlife Service - Region 6
P.O. Box 25486
Denver Federal Center
Denver, CO 80225

National Park Service:

National Park Service - Midwest Region
601 Riverfront Drive
Omaha, NE 68102-4226

National Oceanic & Atmospheric Admin.:

NGS Information Services, NOAA, N/NGS12
National Geodetic Survey SSMC-3, #9202
1315 East-West Highway
Silver Spring, MD 20910-3282

City Planner:

City of Glasston, North Dakota
600 Division Avenue
Cavalier, ND 58220

City Planner:

City of Saint Thomas, North Dakota
City Hall
Box 177
St. Thomas, ND 58276

Re: STB Docket No. 1041X, *Dakota Northern Railroad, Inc. -- Abandonment Exemption -- in Walsh and Pembina Counties, ND*

July 23, 2009

Page 2

Dear Agency or Governmental Representative:

Dakota Northern Railroad, Inc. (DN) plans to file a Petition with the Surface Transportation Board (STB) in the near future for an exemption permitting abandonment of a portion of its Glasston Subdivision between Milepost 42.1, which is approximately 700 feet south of a township road (DOT No. 082103A) north of Grafton, and Milepost 60.2, which is the end of active track near Glasston, a distance of 18.1 miles in Walsh and Pembina Counties, North Dakota ("the Rail Line"). The Rail Line is shaded in red on a map that is attached to this letter as Appendix 1.

Pursuant to STB regulations at 49 C.F.R. § 1105.7, this letter is to request your assistance in identifying potential environmental and historic effects of the proposed abandonment. DN does not anticipate any adverse environmental or historic impacts; however, if you identify any such adverse impacts, please describe any action that could be taken to mitigate such adverse impacts. Please provide a written response to this letter so that it can be included in a Draft Environmental and Historic Report that DN will prepare and file with the STB.

COUNTY AND CITY PLANNING AGENCIES. Please state whether the proposed abandonment would be consistent with existing land-use plans. Describe any inconsistencies.

US SOIL CONSERVATION SERVICE. Please state the effect of the proposed abandonment on any prime agricultural land.

US FISH AND WILDLIFE SERVICE. Please state (1) whether the proposed abandonment is likely to adversely affect endangered or threatened species or areas designated as a critical habitat and, if so, please describe such effects; and (2) whether wildlife sanctuaries or refuges, National or State parks or forests will be affected and, if so, please describe such effects.

STATE WATER QUALITY OFFICIALS. Please state whether the proposed abandonment would be consistent with applicable Federal, State or Local water quality standards. Please describe any inconsistencies.

July 23, 2009

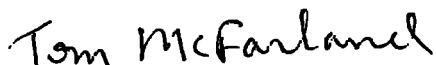
Page 3

US AND STATE ENVIRONMENTAL PROTECTION AGENCIES (OR EQUIVALENT AGENCY). Please (1) identify any potential adverse environmental effects of the proposed abandonment on the surrounding area, and (2) identify the location of any known hazardous materials spills on the right-of-way of the Rail Line, and list the types of hazardous materials involved, and (3) state whether permits under Section 402 of the Clean Water Act (33 U.S.C. § 1342) are required for the proposed abandonment.

STATE HISTORICAL PRESERVATION OFFICE. Please identify any known bridges and/or structures located on the Rail Line that are 50 years old or older, and which are historically significant. Please state whether the proposed abandonment would have an adverse effect on such bridges and/or structures and, if so, please describe efforts that can be taken during removal of the tracks in the Rail Line to mitigate any such adverse effects.

Please send your reply to me as DN's attorney to: Thomas F. McFarland, Thomas F. McFarland, P.C., 208 South LaSalle Street, Suite 1890, Chicago, IL 60604-1112. You may reach me by telephone at (312) 236-0204 if you have any questions or need further information. DN appreciates your assistance in furnishing a reply to this letter.

Very truly yours,



Thomas F. McFarland
*Attorney for Dakota Northern
Railroad, Inc.*

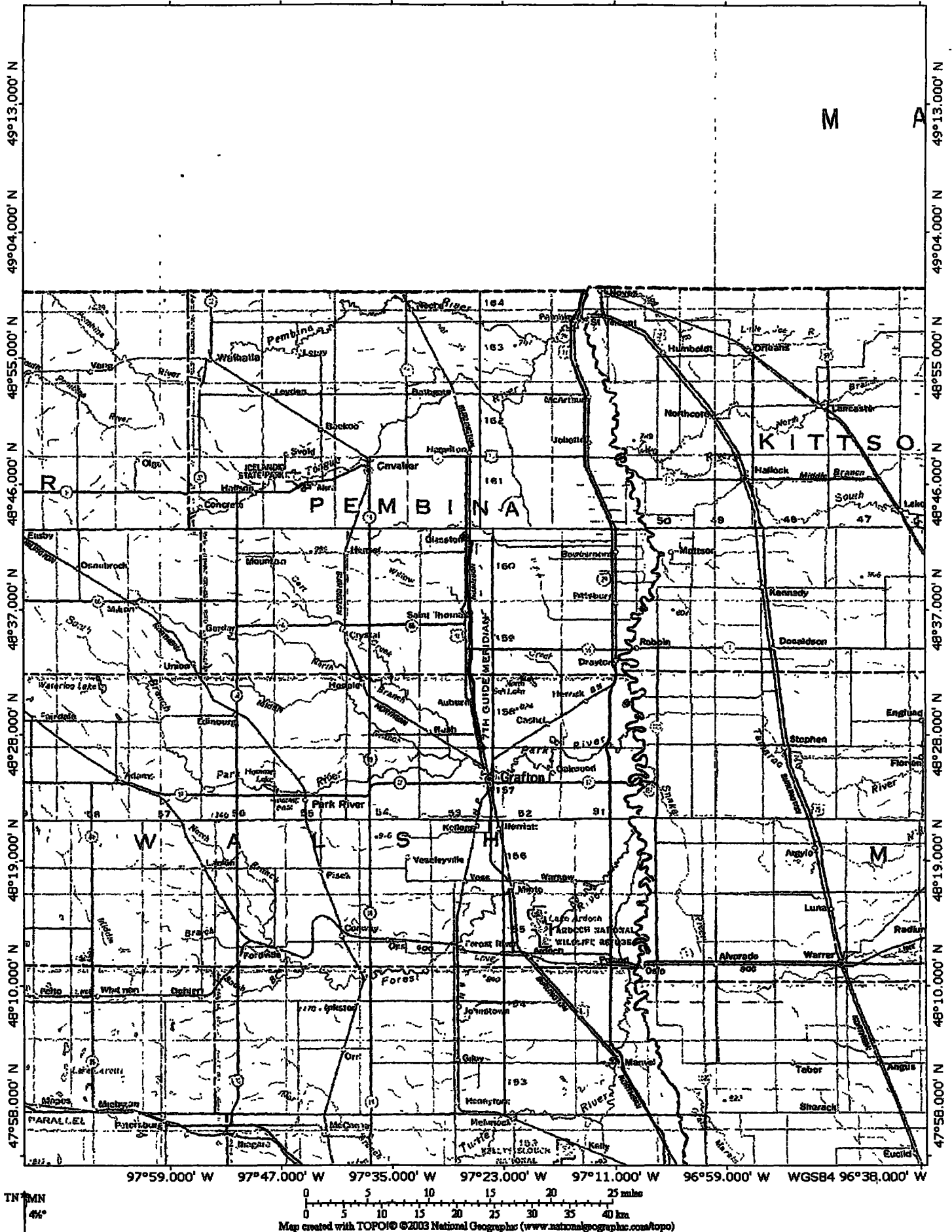
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cc: Mr. George LaPray

Appendix 1

TOPOI map printed on 07/03/09 from "Untitled.tpo"

97°59.000' W 97°47.000' W 97°35.000' W 97°23.000' W 97°11.000' W 96°59.000' W WGS84 96°38.000' W



Map created with TOPO!® ©2003 National Geographic (www.nationalgeographic.com/topo)

**DRAFT ENVIRONMENTAL
AND HISTORIC REPORT**

APPENDIX 3



NORTH DAKOTA
DEPARTMENT of HEALTH

ENVIRONMENTAL HEALTH SECTION
Gold Seal Center, 918 E. Divide Ave.
Bismarck, ND 58501-1947
701.328.5200 (fax)
www.ndhealth.gov



August 14, 2009

Thomas F. McFarland, P.C.
208 South LaSalle Street, Suite 1890
Chicago, IL 60604-1112

Re: STB Docket No 1041X, Dakota Northern RR, Inc., Abandonment Exemption
Walsh and Pembina Counties, North Dakota

Dear Mr. McFarland:

This department has reviewed the information concerning the above-referenced project submitted under date of July 23, 2009, with respect to possible environmental impacts.

This department believes that environmental impacts from the proposed construction will be minor and can be controlled by proper construction methods. With respect to construction, we have the following comments:

1. Follow Best Management Practices during salvage activities to prevent dirt, construction debris, and waste material from entering a storm drainage system or water body.
2. Any releases of petroleum products, hazardous materials, or chemicals that may impact human health or the environment, which are known to have occurred in the past or are discovered in the project area during abandonment and salvage operations, must be reported to the North Dakota Department of Health. The Department's Environmental Emergency Response Contacts List is attached.
3. Care is to be taken during construction activity near any water of the state to minimize adverse effects on a water body. This includes minimal disturbance of stream beds and banks to prevent excess siltation, and the replacement and revegetation of any disturbed area as soon as possible after work has been completed. Caution must also be taken to prevent spills of oil and grease that may reach the receiving water from equipment maintenance, and/or the handling of fuels on the site. Guidelines for minimizing degradation to waterways during construction are attached.
4. Projects disturbing one or more acres are required to have a permit to discharge storm water runoff until the site is stabilized by the reestablishment of vegetation or other permanent cover. Further information on the storm water permit may be obtained from the Department's website or by calling the Division of Water Quality (701-328-5210). Also, cities may impose additional requirements and/or specific best management practices for

construction affecting their storm drainage system. Check with the local officials to be sure any local storm water management considerations are addressed.

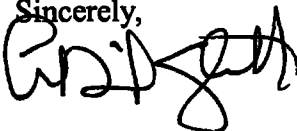
5. All solid waste materials must be managed and transported in accordance with the state's solid and hazardous waste rules. Appropriate efforts to reduce, reuse and/or recycle waste materials are strongly encouraged. As appropriate, segregation of inert waste from non-inert waste can generally reduce the cost of waste management. Further information on waste management and recycling is available from the Department's Division of Waste Management at (701) 328-5166.

The department owns no land in or adjacent to the proposed improvements, nor does it have any projects scheduled in the area. In addition, we believe the proposed activities are consistent with the State Implementation Plan for the Control of Air Pollution for the State of North Dakota.

These comments are based on the information provided about the project in the above-referenced submittal. The U.S. Army Corps of Engineers may require a water quality certification from this department for the project if the project is subject to their Section 404 permitting process. Any additional information which may be required by the U.S. Army Corps of Engineers under the process will be considered by this department in our determination regarding the issuance of such a certification.

If you have any questions regarding our comments, please feel free to contact this office.

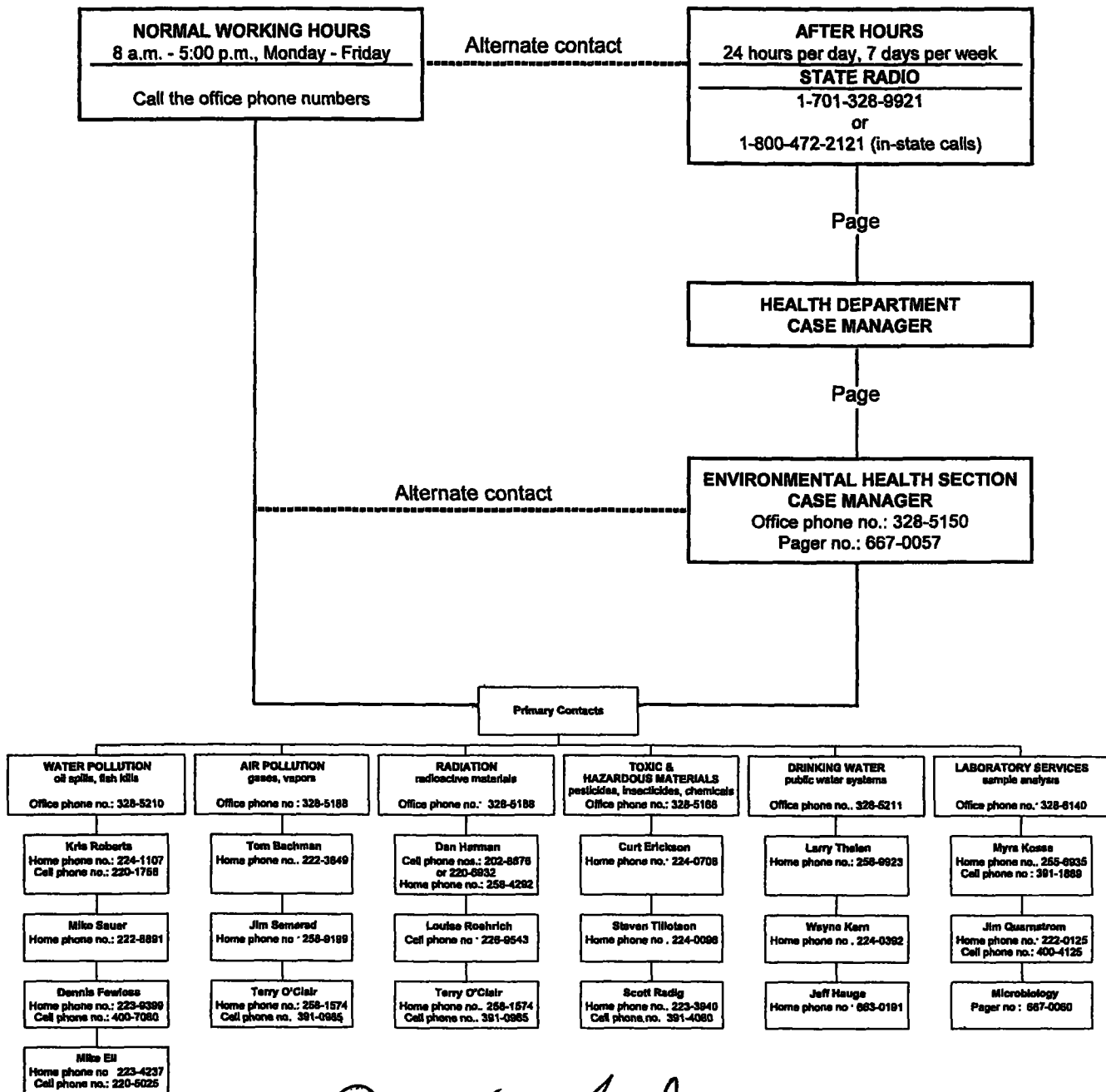
Sincerely,



L. David Glatt, P.E., Chief
Environmental Health Section

LDG:cc
Attach.

**North Dakota Department of Health
Environmental Health Section
Environmental Emergency Response Contacts List**



1st Alternative Contact

Dana Mount
Office phone no.: 328-5202
Home phone no.: 223-6735
Cell phone no.: 426-7273

2nd Alternative Contact

L. David Glatt
Office phone no.: 328-5152
Home phone no.: 255-6391
Cell phone no.: 220-3102

Approved by:

Dana E. Mount
Emergency Response Coordinator

Date:

August 21, 2008

Approved by:

L. David Glatt
Chief, Environmental Health Section

Date:

August 21, 2008

**ND Department of Health
Environmental Health Section
Gold Seal Center
918 East Divide Avenue
Bismarck, ND 58501-1947**

August 21, 2008



Construction and Environmental Disturbance Requirements

These represent the minimum requirements of the North Dakota Department of Health. They ensure that minimal environmental degradation occurs as a result of construction or related work which has the potential to affect the waters of the State of North Dakota. All projects will be designed and implemented to restrict the losses or disturbances of soil, vegetative cover, and pollutants (chemical or biological) from a site.

Soils

Prevent the erosion of exposed soil surfaces and trapping sediments being transported. Examples include, but are not restricted to, sediment dams or berms, diversion dikes, hay bales as erosion checks, riprap, mesh or burlap blankets to hold soil during construction, and immediately establishing vegetative cover on disturbed areas after construction is completed. Fragile and sensitive areas such as wetlands, riparian zones, delicate flora, or land resources will be protected against compaction, vegetation loss, and unnecessary damage.

Surface Waters

All construction which directly or indirectly impacts aquatic systems will be managed to minimize impacts. All attempts will be made to prevent the contamination of water at construction sites from fuel spillage, lubricants, and chemicals, by following safe storage and handling procedures. Stream bank and stream bed disturbances will be controlled to minimize and/or prevent silt movement, nutrient upsurges, plant dislocation, and any physical, chemical, or biological disruption. The use of pesticides or herbicides in or near these systems is forbidden without approval from this Department.

Fill Material

Any fill material placed below the high water mark must be free of top soils, decomposable materials, and persistent synthetic organic compounds (in toxic concentrations). This includes, but is not limited to, asphalt, tires, treated lumber, and construction debris. The Department may require testing of fill materials. All temporary fills must be removed. Debris and solid wastes will be removed from the site and the impacted areas restored as nearly as possible to the original condition.

From: Simon Monroe <Simon.Monroe@noaa.gov>
To: mcfarland@aol.com
Cc: Surface Transportation Board <sea@stb.dot.gov>; Surveyorlady@yahoo.com; Gilbert Mitchell <Gilbert.Mitchell@noaa.gov>; maughtman@fs.fed.us; Simon Monroe <Simon.Monroe@noaa.gov>
Subject: [NGS Response, STB Docket AB-1041X]
Date: Fri, Aug 21, 2009 11:12 am

Thank you for sharing your railroad abandonment environmental report for

Grafton, Pembina, Walsh Counties, NORTH DAKOTA.

Approximately 01 geodetic survey marks may be located in the area described. If marks will be disturbed by the abandonment, [THE RAILROAD] shall consult with the National Geodetic Survey (NGS) at least 90 days prior to beginning salvage activities that will disturb, or destroy any geodetic station

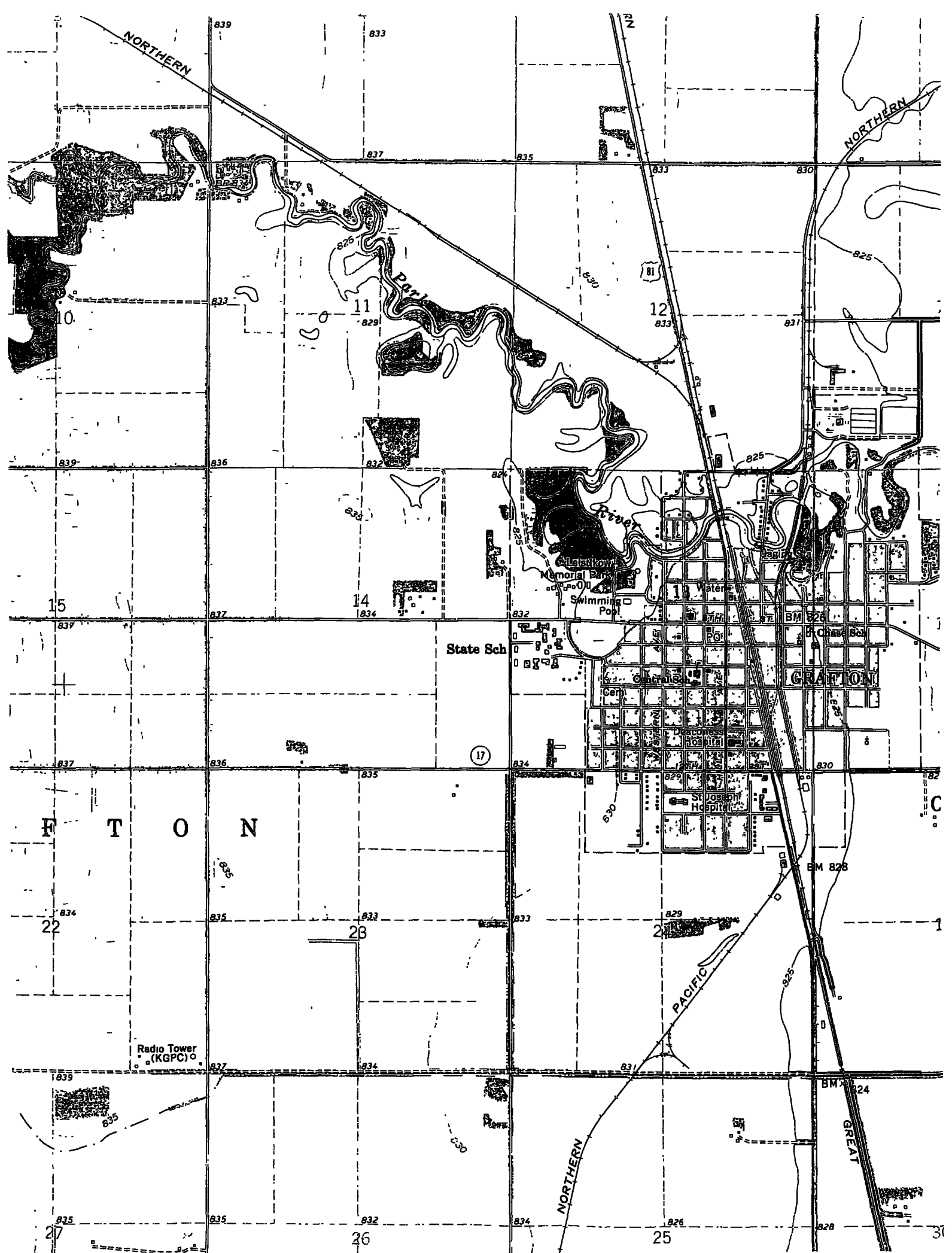
marks are described on the attached file. Additional advice is provided at <http://geodesy.noaa.gov/marks/railroads/>
|Dist|PID...|H V|Vert_Source|Latitude.....|Longitude.....|Stab|Designation

|---|---|---|---|---|---|---|---|

|....|TD0280|. 2|88/ADJUSTED|N484118.....|W0972649.....|C...|M 182

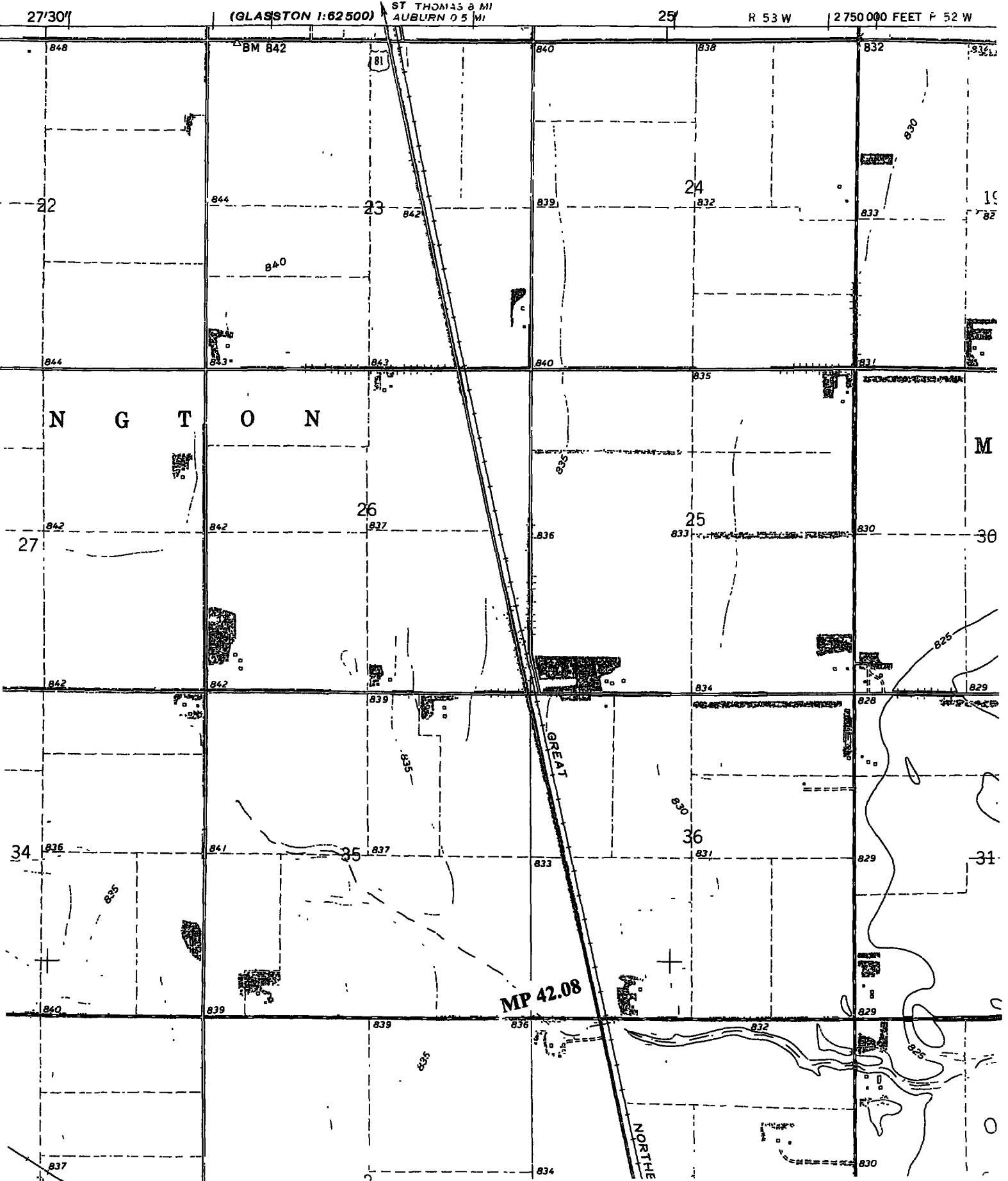
**DRAFT ENVIRONMENTAL
AND HISTORIC REPORT**

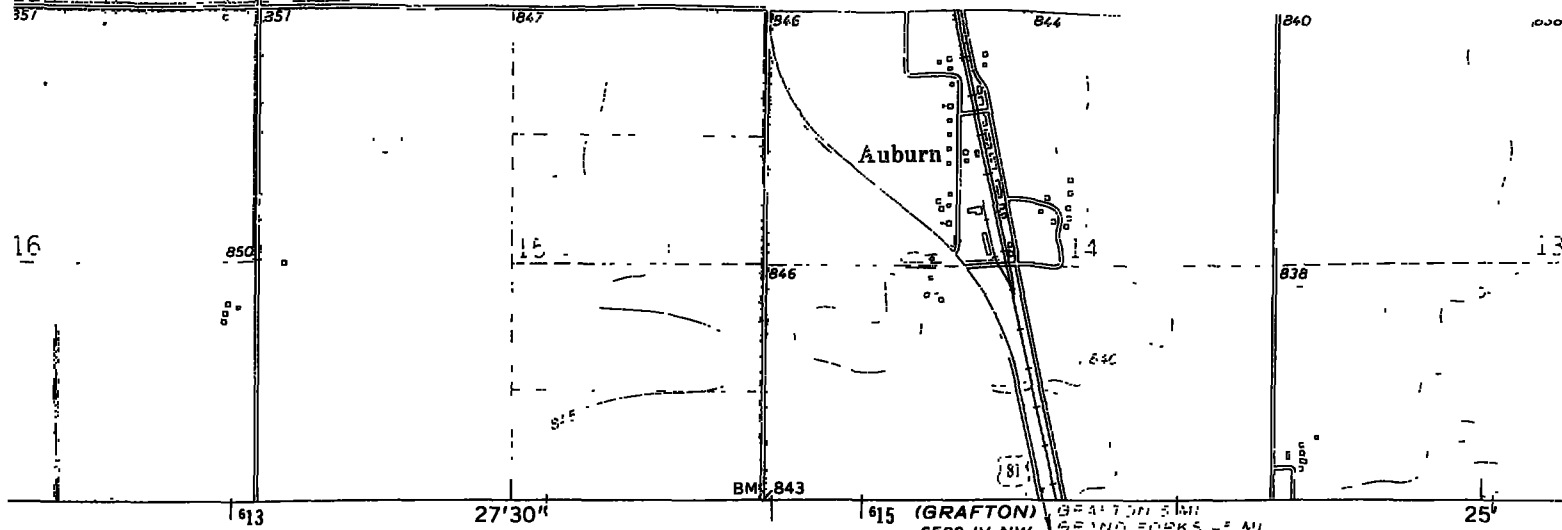
APPENDIX 4



STATE OF NORTH DAKOTA
WATER CONSERVATION COMMISSION
GOVERNOR JOHN E. DAVIS, CHAIRMAN
MILO W. HOISVEEN, SECRETARY AND CHIEF ENGINEER

7.5 M

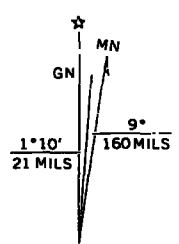




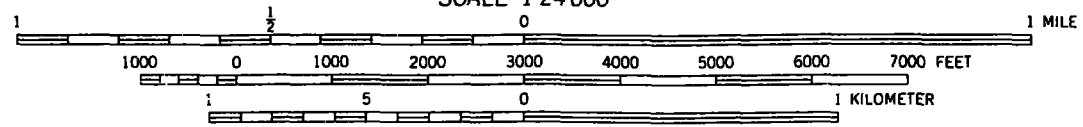
Geological Survey
Water Commission

Aerial
North Dakota coordinate

1:50,000 scale
Datum

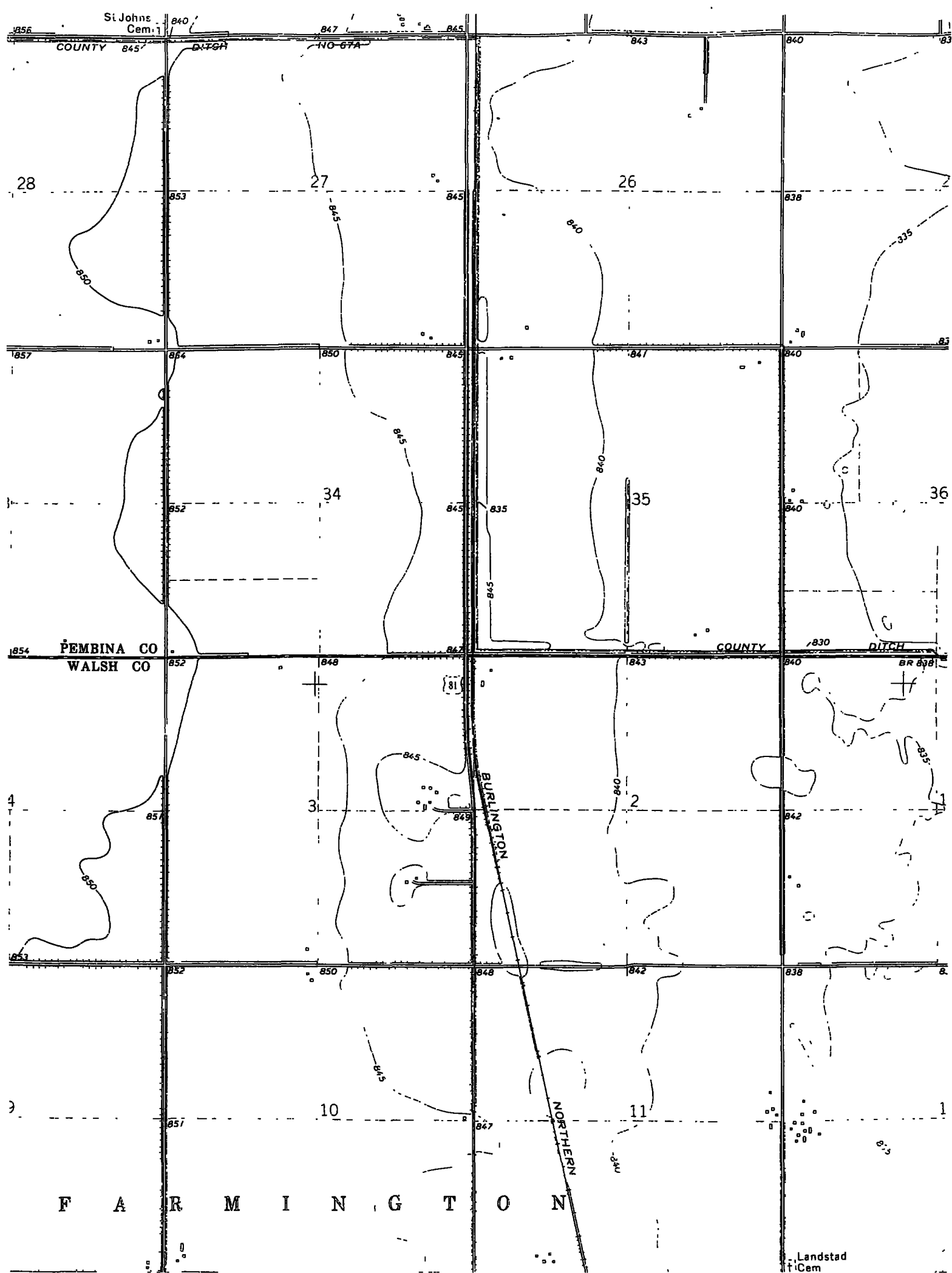


UTM GRID AND 1972 MAGNETIC NORTH
DECLINATION AT CENTER OF SHEET

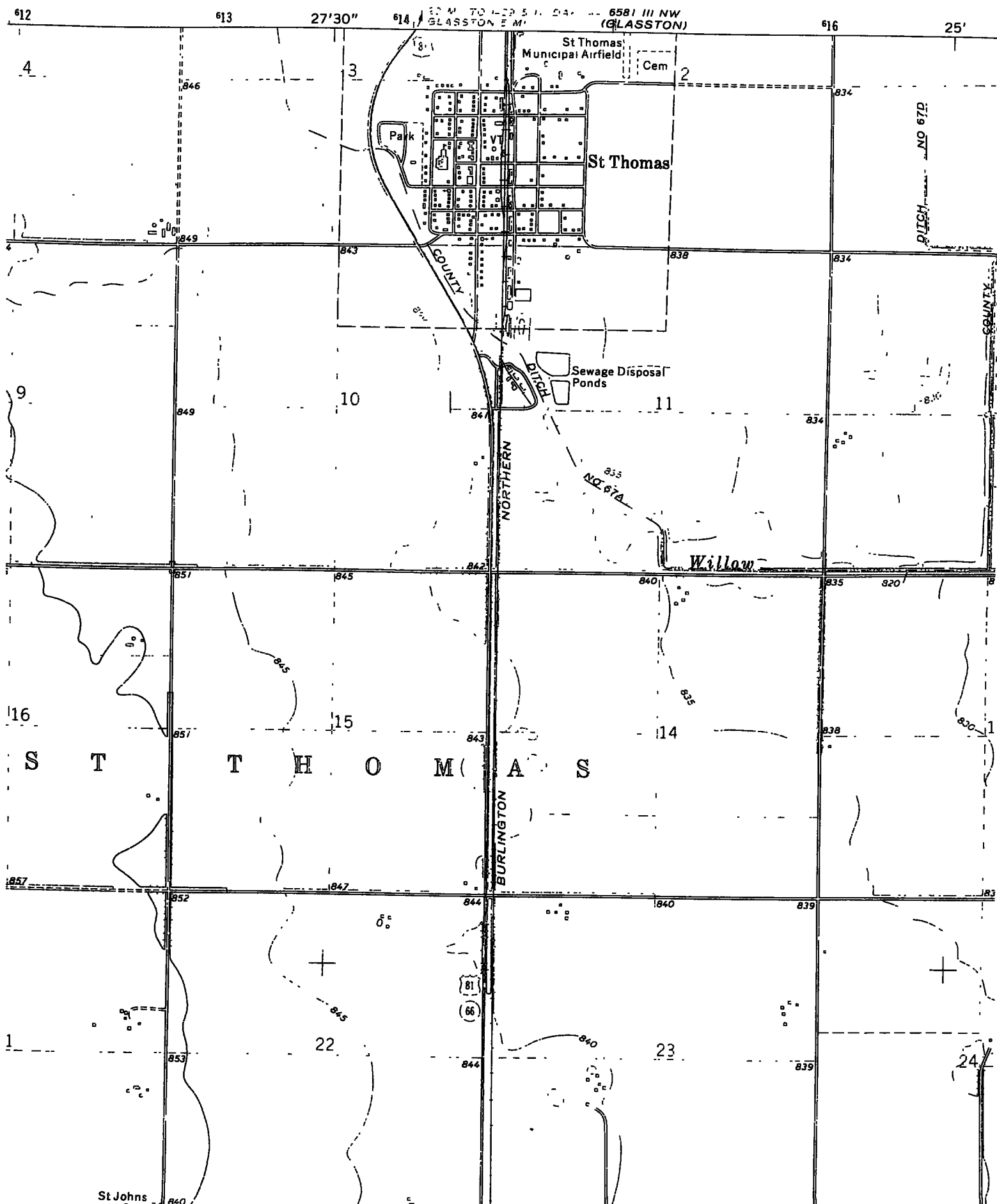


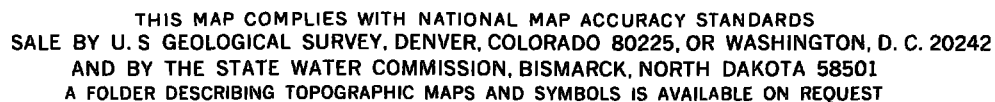
CONTOUR INTERVAL 5 FEET
DATUM IS MEAN SEA LEVEL

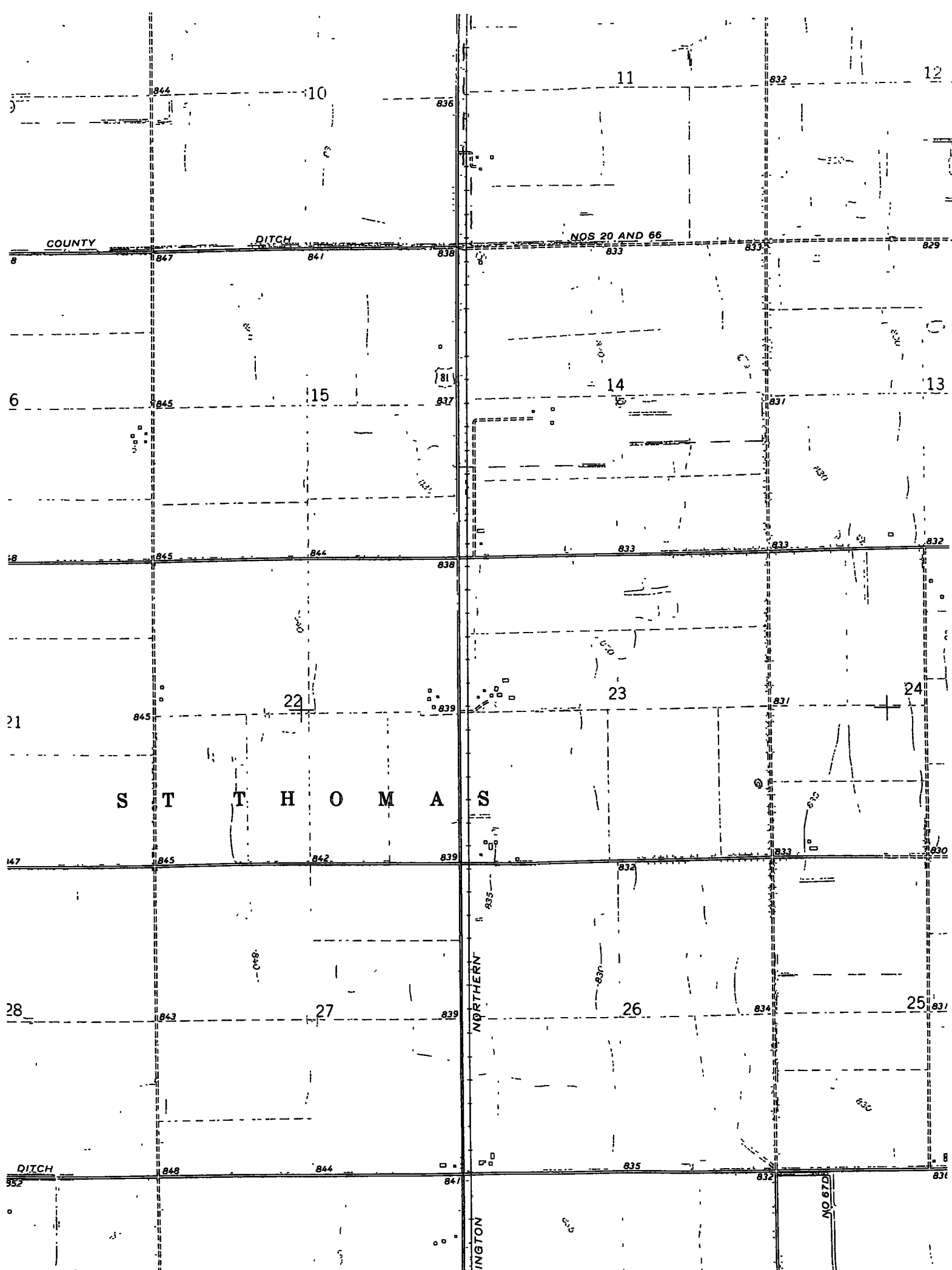
THIS MAP COMPLIES WITH NATIONAL MAP ACCURACY STANDARDS
FOR SALE BY U. S. GEOLOGICAL SURVEY, DENVER, COLORADO 80225, OR WASHINGTON, D. C. 20242
AND BY THE STATE WATER COMMISSION, BISMARCK, NORTH DAKOTA 58501
A FOLDER DESCRIBING TOPOGRAPHIC MAPS AND SYMBOLS IS AVAILABLE ON REQUEST



STATE OF NORTH DAKOTA
WATER COMMISSION







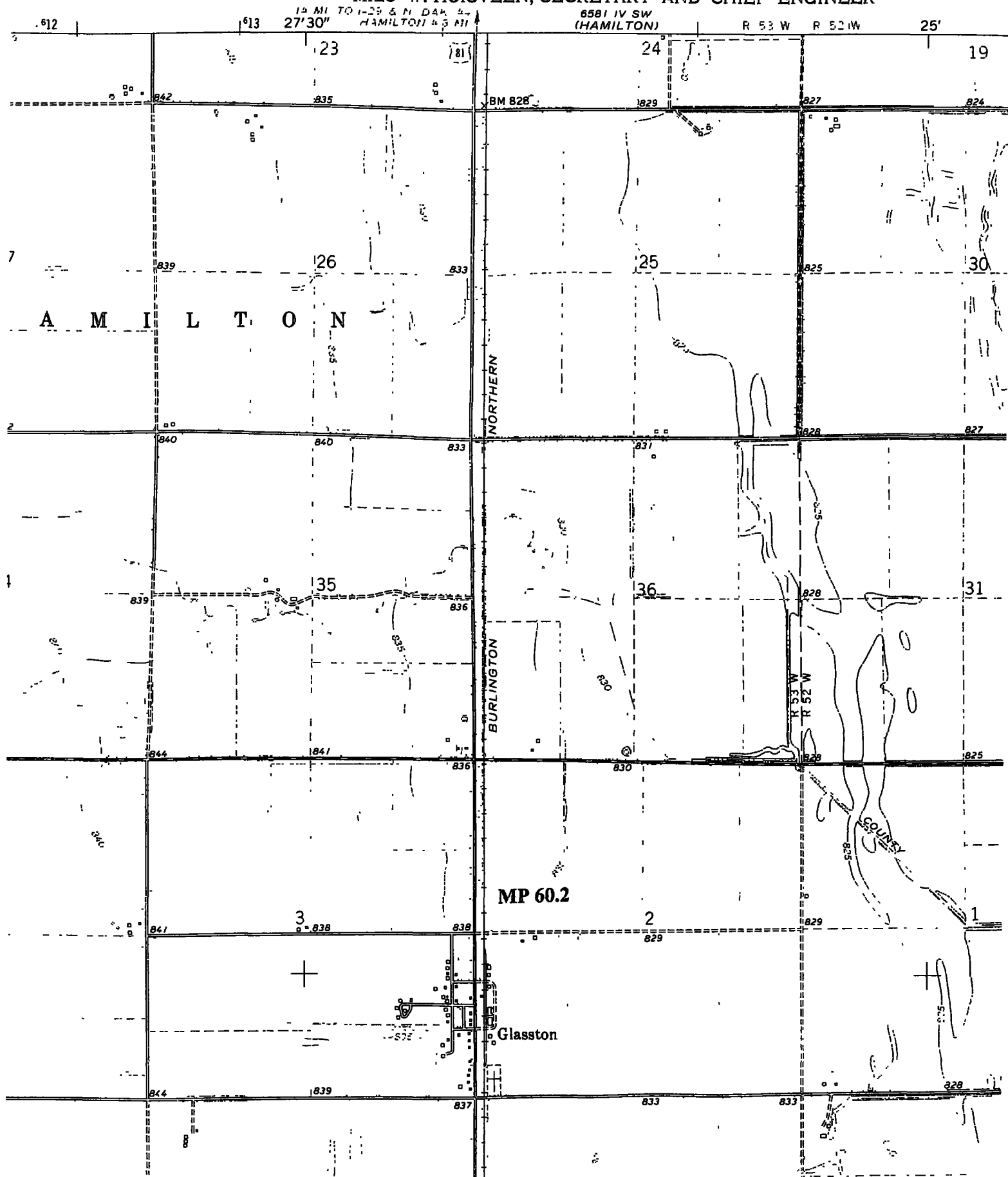
STATE OF NORTH DAKOTA

WATER COMMISSION

GOVERNOR WILLIAM L. GUY, CHAIRMAN

MILO W. HOISVEEN, SECRETARY AND CHIEF ENGINEER

IOR



**DRAFT ENVIRONMENTAL
AND HISTORIC REPORT**

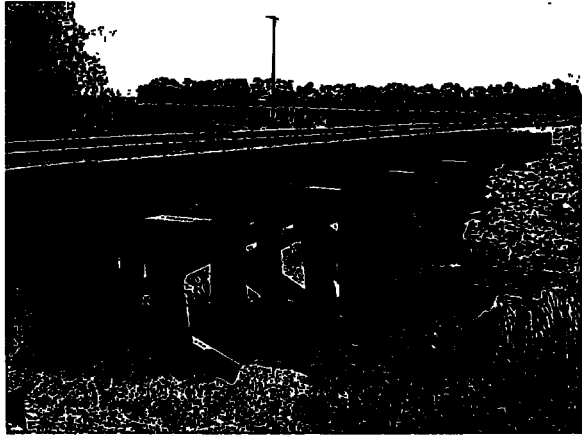
APPENDIX 5

**Dakota Northern Railroad
Glasston Sudivision
Bridge Photographs**

**Bridge 42.11
Photo No. 1**



**Bridge 42.11
Photo No. 2**



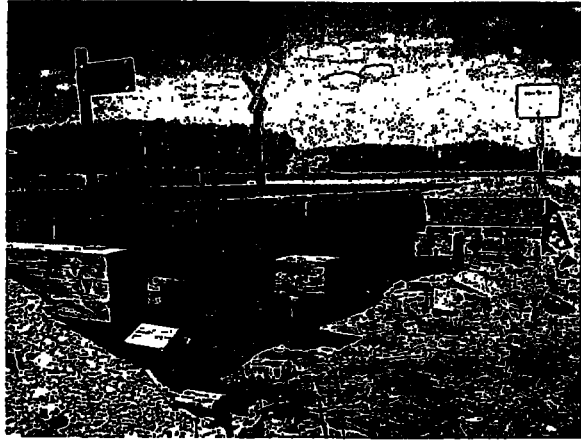
**Bridge 42.11
Photo No. 3**



**Bridge 42.11
Photo No. 4**



Bridge 43.16
Photo No. 1



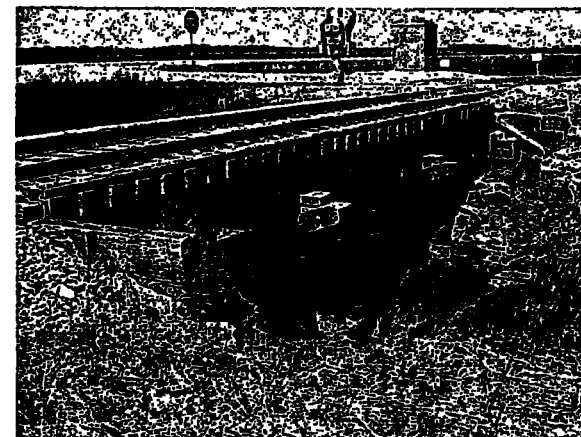
Bridge 43.16
Photo No. 2



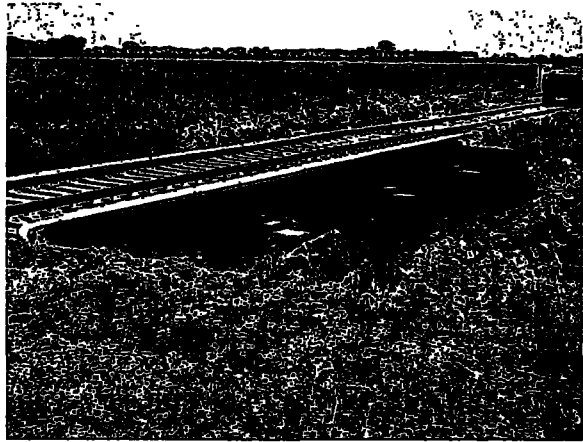
Bridge 43.16
Photo No. 3



Bridge 50.2
Photo No. 1



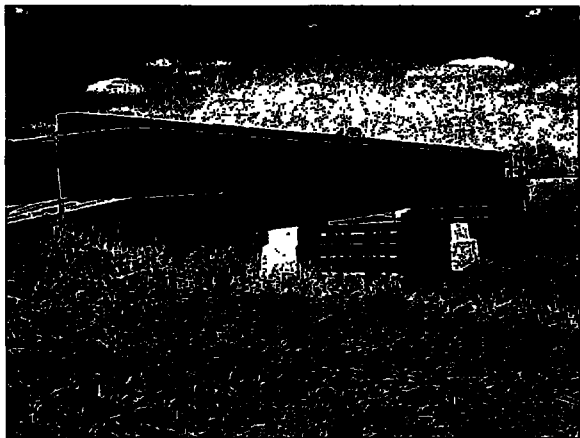
Bridge 50.2
Photo No. 2



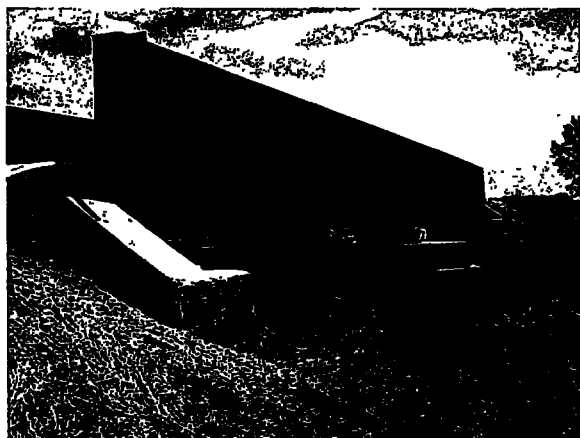
Bridge 50.2
Photo No. 3



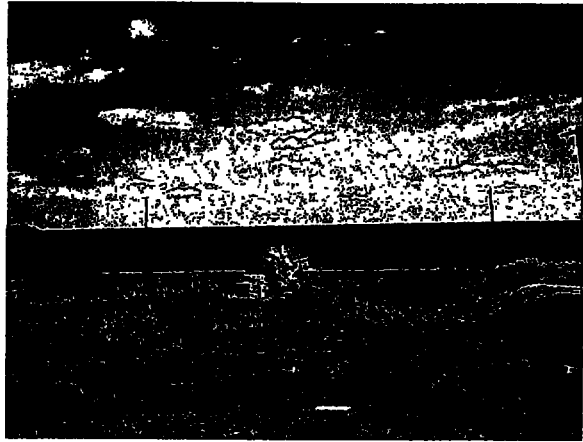
Bridge 52.9
Photo No. 1



Bridge 52.9
Photo No. 2



Bridge 52.9
Photo No. 3



Bridge 55.6
Photo No. 1



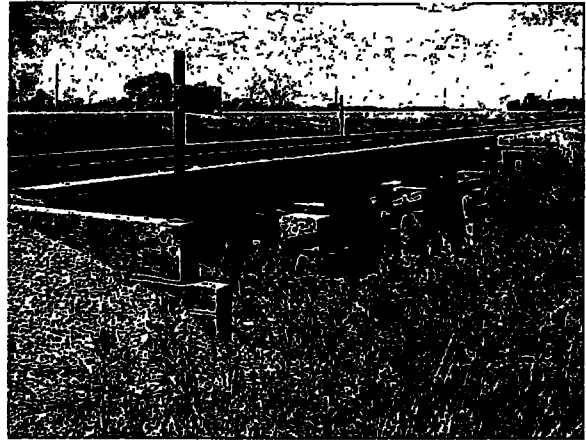
Bridge 55.6
Photo No. 2



Bridge 55.6
Photo No. 3



Bridge 55.9
Photo No. 1



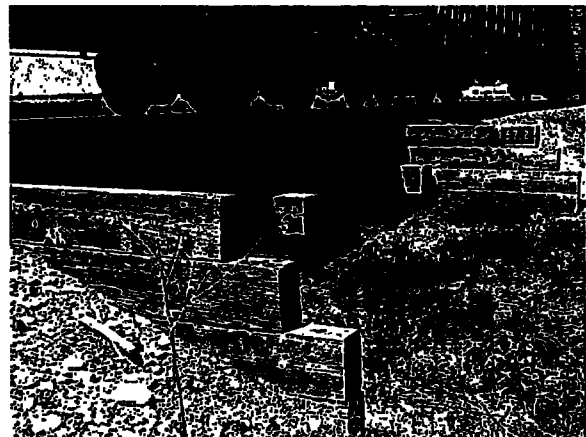
Bridge 55.9
Photo No. 2



Bridge 55.9
Photo No. 3



Bridge 57.2
Photo No. 1



Bridge 57.2
Photo No. 2



Bridge 57.2
Photo No. 3



Bridge 57.6
Photo No. 1



Bridge 57.6
Photo No. 2



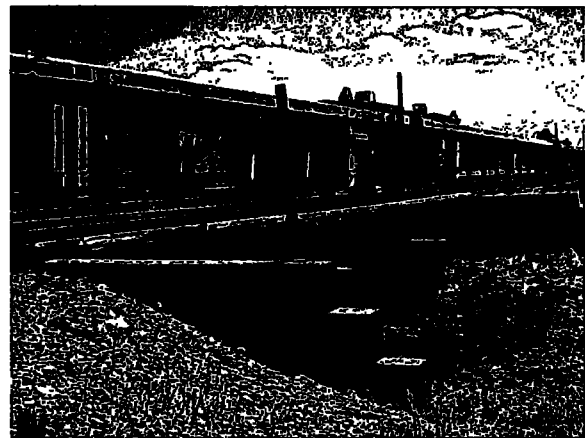
Bridge 57.6
Photo No. 3



Bridge 58.5
Photo No. 1



Bridge 58.5
Photo No. 2



Bridge 58.5
Photo No. 3



**DRAFT ENVIRONMENTAL
AND HISTORIC REPORT**

APPENDIX 6



**STATE
HISTORICAL
SOCIETY
OF NORTH DAKOTA**

RECEIVED

AUG 24 2009

McFARLAND, P.C.

John Hoeven
Governor of North Dakota

North Dakota
State Historical Board

Chester E. Nelson, Jr.
Bismarck - President

Gereld Gerntholz
Valley City - Vice President

Richard Kloubec
Fargo - Secretary

Albert I. Berger
Grand Forks

Calvin Grinnell
New Town

Diane K. Larson
Bismarck

A. Ruric Todd III
Jamestown

Sara Otte Coleman
Director
Tourism Division

Kelly Schmidt
State Treasurer

Alvin A. Jaeger
Secretary of State

Douglass Prchal
Director
Parks and Recreation
Department

Francis Ziegler
Director
Department of Transportation

Merlan E. Paaverud, Jr.
Director

Accredited by the
American Association
of Museums

August 20, 2009

Thomas F. McFarland
Thomas F. McFarland, PC
208 South LaSalle Street, Suite 1890
Chicago IL 60604-1112

ND SHPO Ref.:09-1425 STB docket No. 1041X Dakota Northern Railroad
Inc. Abandonment Exemption - in Walsh and Pembina Counties, North
Dakota

Dear Mr. McFarland,

We received your letter regarding ND SHPO Ref.:09-1425 STB docket No. 1041X Dakota Northern Railroad Inc. Abandonment Exemption - in Walsh and Pembina Counties, North Dakota. If any borrow fill material (gravel, sand, etc) is required for the project, the material must be derived from an approved source, that is, one surveyed by an archaeologist and found to contain no significant cultural resources. We would recommend early consultation with relevant federal and state agencies regarding permits, regulatory issues or other matters regarding the project.

We look forward to further consultation as the project develops. If there are photographs of standing structures, such as bridges or railroad-associated structures, please forward them for review. Please include the ND SHPO Reference number listed above in further correspondence for this specific project. If you have any questions please contact Susan Quinnell at (701) 328-3576, or squinnell@nd.gov

Sincerely,

Merlan E. Paaverud, Jr.
State Historic Preservation Officer
(North Dakota)

and
Director, State Historical Society of North Dakota

CERTIFICATE OF SERVICE

I hereby certify that on August 26, 2009, I served the foregoing document, Draft

Environmental and Historic Report, by first-class, U.S. mail, postage prepaid, on the following:

State Clearinghouse

North Dakota State Single Point of Contact
Governors Office
600 East Boulevard Avenue
Department 101
Bismark, ND 58505-3001

State Environmental Protection Agency

North Dakota Department of Health
Environmental Health Section
918 East Divide Avenue
Bismark, ND 58501-1947

County Commissioners:

Walsh County Commissioners
600 Cooper Avenue
Grafton, ND 58237-1542

County Commissioners:

Pembina County Commissioners
301 Dakota Street W. #1
Cavalier, ND 58220

Environmental Protection Agency (regional office):

U.S. Environmental Protection Agency
Region 8
999 18th Street, Suite 500
Denver, CO 80202-2466

U.S. Fish & Wildlife Service:

U.S. Fish & Wildlife Service - Region 6
P.O. Box 25486
Denver Federal Center
Denver, CO 80225

U.S. Army Corps of Engineers

U.S. Army Corps of Engineers
Chicago District (CELRC-PA)
111 N. Canal Street
Chicago, IL 60606-7206

National Park Service:

Nick Chevance, Environmental Coordinator
Planning and Compliance Office
National Park Service - Midwest Region
601 Riverfront Drive
Omaha, NE 68102-4226

Natural Resources Conservation Service:

Natural Resources Conservation Service
USDA
220 E. Rosser Avenue
Bismark, ND 58502-1458

National Oceanic & Atmospheric Admin.:

NGS Information Services, NOAA, N/NGS12
National Geodetic Survey SSMC-3, #9202
1315 East-West Highway
Silver Spring, MD 20910-3282

North Dakota Historical Preservation Office:

North Dakota State Historical Society
612 East Boulevard Avenue
Bismark, ND 58505

City Planner:

City of Grafton, North Dakota
5 East 4th Street
P.O. Box 578
Grafton, ND 58237

City Planner:

City of Saint Thomas, North Dakota
City Hall
Box 177
St. Thomas, ND 58276



Thomas F. McFarland

PETITION FOR EXEMPTION

APPENDIX 4

DRAFT FEDERAL REGISTER NOTICE PER 49 C.F.R. 1152.60(c)

STB Docket No. AB-1041X, *Dakota Northern Railroad, Inc. -- Abandonment Exemption -- in Walsh and Pembina Counties, ND*

Notice of Petition for Exemption to Abandon Rail Service

On September _____, 2009, DAKOTA NORTHERN RAILROAD, INC. (DN), filed with the Surface Transportation Board, Washington, DC, a Petition for Exemption from 49 U.S.C. 10903 for abandonment of a portion of its Glasston Subdivision between Milepost No. 42.08 at the north edge of Private Crossing DOT No. 082102T approximately 2.7 miles north of Grafton, and Milepost No. 60.2 at the end of active track approximately 0.6 miles north of Glasston, a distance of 18.12 miles in Walsh and Pembina Counties, ND (the rail line).

The rail line does not contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it.

The interest of railroad employees would be protected by imposition of conditions to approval of abandonment imposed in *Oregon Short Line R. Co. - Abandonment - Goshen*, 360 I.C.C. 91 (1979).

Any offer of financial assistance will be due no later than 10 days after service of a decision granting the petition for exemption.

All interested persons should be aware that following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use.

Any request for a public use condition and any request for trail use/rail banking will be due no later than 20 days after notice of the filing of the petition for exemption is published in the Federal Register.

Persons seeking further information concerning abandonment procedures may contact the Surface Transportation Board or refer to the full abandonment or discontinuance regulations at 49 C.F.R. part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the Section of Environmental Analysis will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact the Section of Environmental Analysis. EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

PETITION FOR EXEMPTION

APPENDIX 5

AFFIDAVIT OF PUBLICATION

STATE OF NORTH DAKOTA,

County of Pembina

} ss.

Timothy J. Schroeder, being first duly sworn, on his/her

oath deposes and says; that THE CAVALIER CHRONICLE is a weekly newspaper of general circulation printed and published in the City of Cavalier, County of Pembina and State of North Dakota, by Chronicle Publishing Co., that it has complied with all requirements of the laws of the State of North Dakota concerning legal publications, is now, and during all the times hereinafter mentioned has been a legal newspaper; that deponent is the President

of said Cavalier Chronicle in charge of the advertising and the advertisement of Notice of Intent to Abandon

a printed copy of which is hereto annexed, was printed and published in every copy of each issue of said Cavalier Chronicle for a period of one consecutive weeks, to-wit:

<u>September 2</u>	<u>20 09</u>	<u>66 1@ \$.68</u>	<u>20</u>
<u> </u>	<u>20</u>	<u> </u>	<u>20</u>
<u> </u>	<u>20</u>	<u> </u>	<u>20</u>

Timothy J. Schroeder

Subscribed and sworn to before me this 3 day
of September, A.D., 20 09.

DELORES M KEMP
Notary Public
State of North Dakota
My Commission Expires Mar. 13, 2010

Delores M. Kemp
NOTARY PUBLIC

NOTICE OF INTENT TO ABANDON

RAIL LINE
DAKOTA NORTHERN RAILROAD, INC. (DN) gives notice that on or about September 15, 2009, it intends to file with the Surface Transportation Board, Washington, DC 20423, a Petition for Exemption from the requirements of 49 U.S.C. § 10903 for abandonment of a portion of its Glasston Subdivision between Milepost 42.08 at the north edge of Private Crossing DOT No. 082102T approximately 2.7 miles north of Grafton, and Milepost 60.2 at the end of active track approximately 0.6 miles north of Glasston, a distance of 18.12 miles in Walsh and Pembina Counties, North Dakota ("the Rail Line"). The Rail Line traverses through United States Postal Zip Codes 58237 and 58276 in Walsh and Pembina Counties, North Dakota. The proceeding has been docketed as STB Docket No. AB-1041X.

The Board's Section of Environmental Analysis (SEA) will generally prepare an Environmental Assessment (EA) which will normally be available 25 days after the filing of the notice for abandonment exemption. Comments on environmental and energy matters should be filed no later than 15 days after the EA becomes available to the public and will be addressed in a Board decision. Interested persons may obtain a copy of the EA or make inquiries regarding environmental matters by writing to SEA, Surface Transportation Board, Washington, DC 20423, or by calling SEA at 202-565-6211.

Appropriate offers of financial assistance to continue rail service can be filed with the Board. Requests for environmental conditions, public use conditions, or trail banking/trails use also can be filed with the Board. An original and 10 copies of any pleading that raises matters other than environmental issues (such as trails use, public use, and offers of financial assistance) must be filed directly with the Board's Office of the Secretary, 1925 K Street, N.W., Washington, DC 20423 (See 49 C.F.R. 1104.1(a) and 1104.3(a)), and one copy must be served on applicant's representative (See 49 C.F.R. 1104.12(a)). Questions regarding offers of financial assistance, public use or trails use may be directed to the Board's Office of Congressional and Public Services at 202-565-1592. Copies of any comments or requests for conditions should be served on the applicant's representative Thomas F. McFarland, Thomas F. McFarland, P.C., 208 South LaSalle Street, Suite 1890, Chicago, IL 60604-1112.
(September 2, 2009)

Publication

Affidavit.....

Received Pa

Affidavit of Publication

STATE OF NORTH DAKOTA, } ss.
County of Walsh

Jackie Thompson

being first duly sworn on his/her oath deposes and says: that THE RECORD is a once weekly newspaper of general circulation printed and published in the City of Grafton, County of Walsh and State of North Dakota, by The Morgan Printing Co., that it has complied with all requirements of the laws of the State of North Dakota concerning legal publications, is now, and during all the times hereinafter mentioned, has been a legal newspaper; that deponent is the publisher of said Record, and the advertisement of Notice of Intent to Abandon Rail Line, a printed copy of which is hereto annexed, was printed and published in every copy of each issue of said Record for a period of one consecutive weeks, to-wit:

	Price	Date
Straight Matter Lines		
First Time Line Rate	54 \$43.74	Sep-02, 20 09
Subsequent Line Rates		20
		20
		20
Tabulated Lines		20
First Time Line Rate		20
Subsequent Line Rates		20
		20
		20
		20
Column Inches		20
First Time Inch Rate		20
Subsequent Inch Rates		20

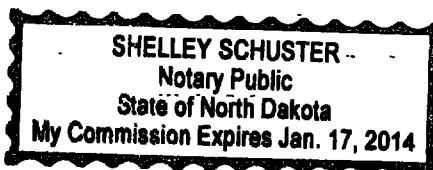
Total Cost of Legal, \$ 43.74

Jackie L. Thompson

Subscribed and sworn to before me this 11th day of Sept.
A.D. 20 09.

(Seal) *Shelley Schuster*

Notary Public, State of North Dakota



My Commission Expires , 20

NOTICE OF INTENT TO ABANDON RAIL LINE
DAKOTA NORTHERN RAILROAD, INC. (DNR) gives notice that on or about September 15, 2009, it intends to file with the Surface Transportation Board, Washington, DC 20423, a Petition for Exemption from the requirements of 49 U.S.C. § 110903 for abandonment of a portion of its Glasston Subdivision between Milepost 42.08 at the north edge of Private Crossing DOT No. 0821021 approximately 2.7 miles north of Grafton, and Milepost 60.2 at the end of active track approximately 0.6 miles north of Glasston, a distance of 18.12 miles in Walsh and Pembina Counties, North Dakota ("the Rail Line"). The Rail Line traverses through United States Postal Zip Codes 58237 and 58276 in Walsh and Pembina Counties, North Dakota. The proceeding has been docketed as STB Docket No. AB-1041X.
The Board's Section of Environmental Analysis (SEA) will generally prepare an Environmental Assessment (EA), which will normally be available 25 days after the filing of the notice for abandonment exemption. Comments on environmental and energy matters should be filed no later than 15 days after the EA becomes available to the public and will be addressed in a Board decision. Interested persons may obtain a copy of the EA or make inquiries regarding environmental matters by writing to SEA, Surface Transportation Board, Washington, DC 20423 or by calling SEA at 202-565-6211.
Appropriate offers of financial assistance to continue rail service can be filed with the Board. Requests for environmental conditions, public use conditions, or rail banking/trails use also can be filed with the Board. An original and 10 copies of any pleading that raises matters other than environmental issues (such as trails use, public use, and offers of financial assistance) must be filed directly with the Board's Office of the Secretary 1925 K Street, N.W., Washington, DC 20423 (See 49 C.F.R. 1104.1(a) and 1104.3(a)), and one copy must be served on applicant's representative (See 49 C.F.R. 1104.12(a)). Questions regarding offers of financial assistance, public use or trails use may be directed to the Board's Office of Congressional and Public Services at 202-565-1592. Copies of any comments or requests for conditions should be served on the applicant's representative, Thomas F. McFarland, Thomas F. McFarland, P.C., 208 South LaSalle Street, Suite 1890, Chicago, IL 60604-1112.
(September 2, 2009)

PETITION FOR EXEMPTION

APPENDIX 6

Pursuant to 28 U.S.C. § 1746, I declare and verify under penalty of perjury under the laws of the United States of America that the foregoing statement is true and correct.

Executed on: 28 Sept 2009



GEORGE LAPRAY

CERTIFICATE OF SERVICE

I hereby certify that on October 2, 2009, I served the foregoing document, Petition For Exemption, by first-class, U.S. mail, postage prepaid, on the following:

Minnesota Department of Transportation
Transportation Building
395 John Ireland Building
St. Paul, MN 55155

SDDCTEA
Railroads for National Defense Program
720 Thimble Shoals Blvd., Suite 130
Newport News, VA 23606-2574

National Park Service
Recreational Resources Assistance Division
P.O. Box 37127
Washington, DC 20013-7127

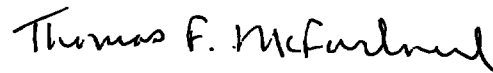
United States Department of Agriculture
Chief of the Forest Service
4th Floor NW, Yates Bldg.
14th Street & Independence Ave., S.W.
Washington, DC 20250

U.S. Department of Interior
National Park Service
Land Resources Division
800 North Capitol St., N.E.
Room 540
Washington, DC 20002

Mr. D. Thomas Ross
Assistant Director
U.S. Department of Interior (Org code 2220)
Recreation and Conservation
1849 C Street, N.W.
Washington, DC 20240

Mr. Gene Krueger, Manager
ADM St. Thomas
P.O. Box 255
St. Thomas, ND 58276

Mr. Corey Plaina, Manager
CHS Agrilience
8248 Highway 81
P.O. Box 279
St. Thomas, ND 58276



Thomas F. McFarland